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AUTHOR	Chen, Ann
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ABSTRACT

Each year the Constitutional Rights Foundation creates a mock trial that addresses serious matters facing young people. This year the lesson confronts the recent shootings at U.S. schools and the subsequent criminal trials. The nature of such violence and its causes including unresolved peer conflict, questions of responsibility, peer pressure, easy access to firearms, and drug and alcohol abuse are incorporated in a frank and serious manner. The lessons and resources included in the packet offer supplementary methods to address many of the topics contained in "People v. Brunetti." The packet is divided into the following sections: "Program Objectives" (both for students and schools); "Code of Ethics"; "Introduction to the 1998-99 California Mock Trial Program"; "Classroom Materials"; "Introduction to 1998-99 California Mock Competition"; "Fact Situation" (Charges, Evidence, Stipulations); "Pretrial Motion and Constitutional Issue" (Arguments, Sources, Legal Authorities, The Mock Pretrial Motion Hearing); "Witness Statements" (Official Diagrams); "The Form and Substance of a Trial"; "Team Role Descriptions"; "Procedures for Presenting a Mock Trial Case"; "Diagram: A Typical Courtroom"; "Mock Trial Simplified Rules of Evidence" (Allowable Evidentiary Objections, Summary of Allowable Objections for the 1998-99 Mock Trial); and "Official Judge, Scorer and Teacher Information Packet" (Teacher's Packet Lesson Plans, Rules of Competition, Order of Events, Judge and Attorney Instructions, Judge's Narrative for Trial Instruction, Scoring Materials, Forms). (BT)

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People v. Brunetti: Issues of Homicide, Conspiracy, Gun Control, and the Right to Bear Arms. Official Materials for the California Mock Trial Program.

Chen, Ann; Hayes, William C., Ed.

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PEOPLE
V.
BRUNETTI

ISSUES OF HOMICIDE, CONSPIRACY, GUN CONTROL,
AND THE RIGHT TO BEAR ARMS

Featuring a pretrial argument on the
Second and Fourteenth Amendments of the U.S. Constitution

Co-Sponsored by:

State Department of Education
State Bar of California
California Young Lawyer's Association
Daily Journal Corporation

OFFICIAL MATERIALS FOR
THE CALIFORNIA MOCK TRIAL PROGRAM

ACKNOWLEDGMENTS

Developed by:
Marshall Croddy, Director, Program and Materials Development
William C. Hayes, Editor
Andy Schwich, Director, History & Law Department
Eden Kusmiersky, Manager, California Mock Trial Program
Ann Chen, Writer

Reviewers:
Marvin Awbrey, Fresno Unified School District
George F. Bird Jr., Esq., Torrance
Karen Hunter Bird, Esq., Torrance
Kendra Blickle, Citizenship & Law-Related Education Center
Russ Donnelly, Educator, Los Angeles
Johnny L. Griffen III, Esq., Sacramento
Michael Kewin, Esq., San Bernardino
The Honorable Harry Low, JAMS, San Francisco
Sharon Matsumoto, Esq., Los Angeles
Pamela J. McFarland, Esq., Fresno
The Honorable Steven Z. Perren, Ventura County Superior Court
Commissioner Joyce Manulis Reikes, Moreno Valley
Ron Rose, Esq., Los Angeles
Professor Paul Von Blum, UCLA
The Honorable Christopher Yeager, Imperial County Municipal Court

Constitutional Rights Foundation Staff:
Todd Clark, Executive Director
Aarin Ulrich, Program Coordinator, California Mock Trial Program
Andrew Costly, Cover Design and Desktop Publishing
Tom Yamashita, Cartoonist, Program Assistant

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PROGRAM OBJECTIVES

For the students, the Mock Trial Program will:

1. Increase proficiency in basic skills (reading and speaking), critical thinking skills (analyzing and reasoning), and interpersonal skills (listening and cooperating).
2. Develop an understanding of the link between our Constitution, our courts, and our legal system.
3. Provide the opportunity for interaction with positive adult role models in the legal community.

For the school, the program will:

1. Provide an opportunity for students to study key concepts of law and the issues of homicide, conspiracy, gun control, and the right to bear arms.
2. Promote cooperation and healthy academic competition among students of varying abilities and interests.
3. Demonstrate the achievements of young people to the community.
4. Provide a hands-on experience outside the classroom from which students can learn about law, society, and themselves.
5. Provide a challenging and rewarding experience for teachers.

CODE OF ETHICS

At the first meeting of the Mock Trial team, this code should be read and discussed by students and their teacher.

All participants in the Mock Trial Competition must adhere to the same high standards of scholarship that are expected of students in their academic performance. Plagiarism* of any kind is unacceptable. Students' written and oral work must be their own.

In their relations with other teams and individuals, students must make a commitment to good sportsmanship in both victory and defeat.

Encouraging adherence to these high principles is the responsibility of each team member and teacher sponsor. Any matter that arises regarding this code will be referred to the teacher sponsor of the team involved.

***Webster's Dictionary defines plagiarism as, "to steal the words, ideas, etc. of another and use them as one's own."**

1998-99 CALIFORNIA MOCK TRIAL PROGRAM

Each year, Constitutional Rights Foundation (CRF) seeks to create a mock trial that addresses serious matters facing young people today. By affording students an opportunity to wrestle with large societal problems within a structured forum, we strive to provide a powerful and timely educational experience. It is our goal that students will conduct co-operative, vigorous and comprehensive analysis of these materials, with the careful guidance of teachers and coaches.

In recent times, there have been a number of tragic shootings at our nation's schools that have become the subject of criminal trials. These incidents, though rare, raise serious issues about the nature of such violence and its causes including unresolved peer conflict, questions of responsibility, peer pressure, easy access to firearms, and drug and alcohol abuse. This year's case incorporates many of these issues in a frank and serious manner.

The lessons and resources included in this packet offer supplementary methods to address many of the topics contained in *People v. Brunetti*. Additional materials covering the subjects of violence and crime are also available. We hope that through participation in the lessons and the Mock Trial Program, students will have a greater capacity to deal with these important issues.

CLASSROOM MATERIALS

For Lesson Plans, see Teacher's Packet, pages 58-66

LESSON 1: School Violence - Background Reading, from CRF's *Challenge of Violence*

Every year, 3 million young people in the United States fall victim to crimes at school. Almost 2 million of these incidents involve violence. Although most school violence takes the form of minor assaults, some episodes are far more serious. Some end in tragedy. For example, in two recent academic years, a total of 85 young people died violently in U.S. schools. Seventy-five percent of these incidents involved firearms.

Reports of assaults, robberies, and vandalism were on the rise in U.S. schools from the late 1960s to the early 1970s. School violence leveled off by 1975. But in the early- and mid-1980s, reports revealed that school violence was on the rise once more, reaching a new peak in the early 1990s. Recent information tells us that today, school violence may be decreasing. In short, school violence, like violence in society, seems to run in cycles. These cycles appear to mirror the trends of violence in our larger society.

The threat of attacks in schools can create fear and disorder among students and teachers. According to a study conducted in 1995, 34 percent of middle school students and 20 percent of high school students admitted that they feared becoming victims of school violence. Eight percent of teachers say they are threatened with violence at school on an average of once a month. Two percent report being physically attacked each year. In a single school year in New York City, 3,984 teachers reported violent crimes against them.

Middle school students are more than twice as likely as high school students to be affected by school violence. Seven percent of eighth graders stay home at least once a month to avoid a bully. Twenty-two percent of urban 11- and 12-year-olds know at least one person their age in a gang. The typical victim of an attack or robbery at school is a male in the seventh grade who is assaulted by a boy his own age.

Studies suggest two reasons for the higher rates of middle school violence. First, early adolescence is a difficult age. Young teenagers are often physically hyperactive and have not

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learned acceptable social behavior. Second, many middle school students have come into contact for the first time with young people from different backgrounds and distant neighborhoods.

Urban schools suffer most from violence. Many of these schools serve neighborhoods troubled by violence and gang-related crime. It is not surprising that these problems find their way onto campus. But a study of 700 communities conducted by the National League of Cities revealed that 30 percent of suburban and rural schools also reported an increase in violence over a five-year period. In another survey conducted by the Children's Institute International, almost 50 percent of all teenagers--rural, suburban, and urban--believe that their school is becoming more violent.

What Can Be Done?

Educators and school boards across the nation are trying various measures to improve school safety. Although the goal of each school board is the same, the problem varies from district to district and even from school to school. Some school districts are relatively safe and seek to remain so. Others are plagued with problems of violence and need to restore order. So a number of different strategies are being tried in schools across the United States.

Discipline Codes, Suspensions, and Expulsion

Seeing a need for discipline, many schools are enacting discipline codes. The U.S. Department of Education suggests that schools set guidelines for behavior that are clear and easily understood. Students, teachers, and parents should discuss the school's discipline policies and talk about how school rules support the rights of students to get a good education. Students should know how to respond clearly to other young people who are intoxicated, abusive, aggressive, or hostile. Students, parents, and teachers can meet and develop an honor code that will contribute to a positive learning environment.

Some schools have started first-offender and rehabilitation programs for students who have been implicated in or suspended for violent assaults at school. These programs offer tutoring and conflict mediation training for the offender and his or her parents. In addition, students and parents may be asked to sign a contract to participate in joint counseling with school staff once the suspended student returns to school.

Many school districts have adopted a zero-tolerance policy for guns. In Los Angeles Unified School District, any student found with a gun is expelled. The policy seems to be weeding out students who are carrying guns. In its first year, about 500 students were recommended for expulsion. The following year the number increased to almost 600 students. The increase raises questions. Is it due to better enforcement? Or is the policy not stopping students from carrying guns?

School Uniforms

Another policy rising in popularity is school uniforms. A recent study by the U.S. Department of Education suggests that school uniforms can help reduce theft, violence, and the negative effects of peer pressure caused when some students come to school wearing designer clothing and expensive sneakers. A uniform code also prevents gang members from wearing colors and insignia that could cause trouble and helps school officials recognize intruders who do not belong on campus.

In Long Beach, California, students, teachers, parents, and school officials worked together to establish a uniform code for all elementary and middle schools. Each school chooses what its uniform will look like. In addition, students can "opt out" of wearing a uniform if they have their parents' approval. The Long Beach program involves 58,000 students and includes assistance for families that cannot afford to buy uniforms. In many Long Beach schools, graduating students donate or sell their used uniforms to needy families.

In the year following the establishment of the uniform policy, Long Beach school officials found that overall school crime decreased 36 percent. Fights decreased 51 percent, sex offenses decreased 74 percent, weapons offenses decreased 50 percent, assault and battery offenses decreased 34 percent, and vandalism decreased 18 percent. Less than 1 percent of the students chose not to wear uniforms.

Across the country, the adoption of school uniforms is so new that it's impossible to tell whether it will have a long-term impact on school violence. Critics have doubts. And some parents, students, and educators find uniforms coercive and demeaning. Some students complain that uniforms turn schools into prisons.

Increased Security Measures

Whenever a violent incident occurs on a campus, there usually are calls to institute stricter security. Many school districts are turning to security measures such as metal detectors, surveillance cameras, X-ray machines, high fences, uniformed security guards, and increased locker searches. Machines similar to those that line airports now stand in many school entrances. Video cameras common to convenience stores now monitor hallways of some schools. About one-fourth of all large school districts routinely use metal detectors to keep guns off campuses. A couple years ago, New York purchased X-ray machines to scan student purses and book bags for weapons.

These security measures definitely deter some violence, but they also have drawbacks. Take metal detectors as an example. First of all, they are expensive. Second, it takes a long time to scan every student. One Brooklyn, New York, high school has students arrive in shifts to get through the metal detectors. Third, metal detectors cannot deter anyone determined to carry a weapon. As a 1993 report for Dade County School Board stated: "Students become creative. They pass weapons in through windows to friends, hide knives and other sharp instruments in shoes and in girlfriend's hair. They manage to find creative ways to bring weapons to school."

Conflict Mediation and Other Education Programs

A number of schools have developed programs that focus on building students' self-esteem and developing social skills to improve student communication. And thousands of schools at all grade levels are teaching methods of conflict resolution and peer mediation to students, parents, and school staff. In some schools, teachers and students are required to get to know each other in discussion sessions where everyone describes their personal strengths and weaknesses, their likes and dislikes, what makes them laugh, and what makes them angry.

Other schools are adopting innovative curricular programs. Law-related education helps students understand the legal system and social issues through interactive classroom activities. Service learning links classroom learning to activities in the community. Character education teaches basic values.

Many educators believe it is important to break down the cold, impersonal atmosphere of large schools by creating "schools within schools," or smaller communities of learning. Whenever possible, they argue, schools should hire more teachers to minimize school violence associated with classroom overcrowding. They also think it is helpful to offer specialized vocational training and instruction in career development to prepare young people for life in ways they can recognize are important.

Joining With the Community

Numerous schools have had success in reducing school violence by developing contacts with police, gang intervention workers, mental health workers, the clergy and the business community. Community groups and businesses can work with schools to create "safe zones," for students on their way to and from school. Stores and offices can also identify themselves as "safe spaces," where young people can find protection if they are being threatened. Enlisting the aid of the community to deal with school violence raises awareness of the problem and helps educators put their money where it belongs, in education.

Still other school districts have set up outreach programs with local employers, so that students with good academic records or special vocational training can be placed in jobs. Professor Jackson Toby of Rutgers University recommends that employers require high school transcripts as part of the job application process and make it known that the best jobs will go to students with the best records.

Discussion Questions

1. What factors do you think might contribute to school disorder and violence?
2. Why does school violence often occur more frequently in middle schools than in high schools?
3. Imagine that you are a school principal who must discipline a first-time violent offender. What action would you take?
4. What actions would you take as a school principal to ensure the safety of your students?

LESSON 2: Group Action, Creating Alternatives to Violence - Background Reading, from CRF's *Challenge of Violence*

Although conflict is part of everyday life, it does not have to lead to violence. Dealing positively with conflict can help people understand each other better, build confidence in their own ability to control their destinies, and develop the skills they need to lead successful, productive lives. A wide variety of methods and programs have been developed to deal positively with conflict and resolve disputes before they become destructive.

The Chain of Violence

"Violence has been with us forever!"
"It's basic human nature to be violent."
"Look at the animals in the jungle. We're just the same as them!"

Sound familiar? You've probably heard people talk about violence in this way. Many people believe that violence is basic to human nature; that violence has been deeply imbedded in the human brain since the beginning of time; that there is nothing we can do about it.

But many scientists who study human behavior think differently. They believe that humans have learned to use violence in response to a more basic fact of life--conflict. Some of these scientists suggest that, if human beings have learned to use violent methods to deal with conflict in the past, they can learn to use other, more constructive methods to deal with conflict in the future

For example, when people are able to describe a conflict clearly, they stand a better chance of solving a problem before it turns violent. In order to describe a conflict, it is helpful to understand what elements, or ingredients, must be combined to produce a conflict. Although conflicts usually arise out of a number of elements, they are always influenced by cause and effect. You've seen it happen--Terry insults Jody, Jody pushes Terry, Terry pushes back harder, and so on. Cause and effect can link a series of elements into a chain that leads to violence. What are some of the links in that chain?

According to Carol Miller Lieber, an educator at Washington University, conflict usually begins with a lack of information. People in conflict often don't know enough about each other to solve a problem they share. This *lack of information* leads to *misunderstanding* and the discovery of *different goals, needs, values, or opinions*. *Barriers of race, language, age, or gender* can turn up the heat on conflict.

These differences can be described as opposing *points of view*. At this stage in a conflict, people who hold opposite points of view will begin to argue. If they do not deal positively with their problem, they will resort to *verbal threats or attacks* to describe their differences. At this stage, the conflict often generates a *flashpoint*, behavior that triggers a *physical attack* from another group or individual.

Today, educators, social service experts, and psychologists are developing programs that teach young people how to resolve conflicts without using violence. What are these programs and how do they work? Have they gotten good results? Can anyone start a conflict resolution program? There are several different types of conflict resolution programs. Most of these programs move beyond a simple avoidance of violence to bring people face to face with the deeper, underlying elements of conflict.

Conflict Resolution Programs

Most conflict resolution programs are based on the premise that people can control emotions that arise out of conflict and lead to violent action. These programs are usually designed to provide people with skills they need to deal with conflict *as it unfolds*. Most conflict resolution programs focus on developing strong communication and problem-solving skills. Role-play activities are particularly useful in developing conflict resolution skills because they allow participants to experience what "the other side" feels and to understand the consequences--positive and negative--of a broad range of responses to conflict.

The primary goal of conflict resolution is to deal with the problem of violence, to keep individuals safe, healthy, and alive. But conflict resolution also encourages young people to peacefully address cultural and racial differences--skills that are necessary for survival in a multicultural world.

For example, at Roosevelt High, a San Francisco Bay Area high school, 53 percent of students are Asian; 42 percent are Latino. The school resonates to the sound of 15 different languages. In the past, racial issues often led to violence. By using conflict resolution techniques to explore the causes and effects of racial tension, students are now sharing their different cultural backgrounds instead of fighting over them. "We basically learned how to work together on little problems like misunderstandings and big problems like racism," said one Roosevelt High student. Dealing skillfully and methodically with a serious problem like racism on campus can elp young people overcome feelings of helplessness and distrust. As they explore the causes nd effects of racial conflict, they begin to feel more powerful and in control of their lives.

eer Mediation

ediation relies on a neutral third party to help groups or individuals deal with conflict. Peer nediation is one of the most popular forms of conflict resolution. Peer mediation is particularly ffective in dealing with conflict between young people. Today's school-based, peer mediation rograms got their start in the 1980s. They were part of a response to the increase in violence hat affected many middle and high schools. Early peer mediation programs were modeled after uccessful adult programs, where community volunteers intervened to settle conflicts between andlords and tenants, consumers and local merchants, or squabbling neighbors. These eighborhood programs were guided by the idea that members of a community are best quipped to resolve all but the most serious of their own disputes, without having to rely on awyers, the police, or the courts.

ike their adult counterparts, student mediators are taught conflict resolution techniques. Mediators can use these techniques to help fellow students settle disputes without having to urn to a teacher, counselor, or principal. Peer mediation programs work well in schools because young people usually connect better with each other than with adults. As one student described it, "When kids talk to other kids their age, they make them feel more comfortable to open up." And when young people come up with their own solutions to problems, they are taking control of their own lives. They are more likely to work hard and follow through on plans and projects that they have created to address their own problems.

According to the originators of SCORE (Student Conflict Resolution Experts), a successful peer mediation program in Massachusetts, students will grow to trust a well-planned program because it works. SCORE's results have been encouraging: Over a six-year period, more than 6,500 conflicts have been successfully mediated. Many of these conflicts involved violence, and many of them revolved around serious racial issues that pitted large groups of students against each other. Ninety-five percent of SCORE's mediations produced written agreements; less than 3 percent of these agreements have been broken.

An effective peer mediation program should have the capacity to mediate a high volume of conflicts. It should include all types of students as mediators and should be useful in settling even the most challenging disputes, including racial and multi-party disputes. SCORE recommends 20 to 25 hours of hands-on training that develops listening, communication and problem-solving skills. Mediators need to learn how to remain neutral in conflicted situations and to help the conflicted parties look beneath the surface for the root causes of conflict. Most important, peer mediation training should include numerous role-plays that give future mediators hands-on experience in dealing with conflict situations.

One student mediator commented on how the SCORE program made a difference in his life. He said: "Before I got into SCORE, there was no other way...but fighting. You would never think, 'Well, I'm going to sit down and try to talk with this person. Let's see if we can work something out.' I never thought that way. But now I do."

Negotiation

In negotiation, there is no independent third party. individuals or groups in conflict use agreed-upon ground rules that allow them to work toward an agreement. In order for negotiation to succeed, both parties must want to find a solution. Neither side must try to win. And both sides must be willing to move away from their original, conflicted position. At the same time, both parties must learn to stand up for their own needs, even if they have to change their position.

Strong communications skills are critical in negotiation, so that both sides can clearly express and understand each other's feelings, needs, and desires. Most important, the parties in conflict must set down and follow guidelines. These guidelines must describe shared interests, for example, "We both need to be able to come to school." As each party suggests possible solutions to the problem, they can evaluate them by determining if they fall within the guidelines for shared interest.

Other Violence Prevention Methods

Below is a brief survey of other programs and methods for managing and resolving conflicts before they escalate into violence:

- Crime prevention and law-related education programs describe how the criminal justice system responds to crime, explore public policy options for dealing with crime, and teach young people how to become involved in making their communities safer.

- Gun violence education programs highlight the threats and consequences involved in the mishandling of guns and offer alternatives to solving problems with guns.

- Life skills training programs may not address violence directly, but they can help young people learn how to avoid violence. Life skills programs usually offer methods to resolve conflict and develop friendships with peers and adults. Young people learn how to resist negative peer pressure and deal with issues of intergroup conflict.

- Recreation programs cannot prevent youth violence by themselves, but they are attractive to young people and work well when linked up with other violence prevention programs. Sports are good outlets for stress and anger, teamwork teaches cooperation, and keep young people off the street and away from possible violence.

Violence prevention programs work best when they are combined with other efforts. For example, efforts to keep weapons out of school can benefit from the support and understanding of parents, local government, the police, and of social or psychiatric services for at-risk youth. The whole community benefits the most when the whole community participates in dealing with the problem of youth violence.

Discussion Questions

1. In your opinion, is violence an integral part of human nature?
2. How can a conflict lead to violence? What are some links in the chain of cause and effect?
3. Who do you think are better qualified to resolve youth conflicts: young people or adults?
4. Most violence prevention programs have not yet been evaluated. Do you think they are effective? Why or why not?
5. Imagine that you are the principal of a middle school. You are concerned with student violence. What kind of prevention program would you adopt? Why?

LESSON 3: Youth, Drugs and Schools - Focus Discussion, from CRF's *The Drug Question*

By the age of 16, many teenagers have experimented with several different types of drugs including marijuana, cigarettes, steroids and alcohol. Some only try these substances while others become users. Unfortunately, the United States retains the highest rate of teen drug use of any industrialized nation. Teenagers in the U.S. are ten times more likely to use illegal drugs than teenagers in Japan.

Alcohol is the most popular, and perhaps the most dangerous drug used by American teenagers. While marijuana use has significantly declined in the last ten years, alcohol use is on the rise. The National Institute on Drug Abuse, who surveyed high school seniors, discovered that while only 18 percent had used marijuana, 64 percent had used alcohol and 29 percent had used tobacco in a one month period. Teens who use drugs are less interested in school, are more likely to drop out, and in the worst scenario, become associated with gangs who promote violence on and off campus.

Peer pressure is one reason teens become involved in drugs. Often, gangs and drugs become a way for teens to "fit in." A 1989 August issue of *Ebony* magazine cites a 16 year-old's account of why he got involved with the whole scene. Keith Houston says, "I joined because everybody else was doing it…the money was good…I use the money to buy clothes, food, drinks and PCP." The teenage years are perhaps the most difficult. Growing up and etching out an adult identity is difficult for many young people. Feelings of not belonging or being alienated are common. At this stage in the game, some problems seem overwhelming and some young people feel that friends or family cannot understand. Drugs and gangs become a way for some teens to cope.

To help teens cope and to combat the problems associated with teen substance abuse, some schools have started prevention programs while others are stressing more law enforcement measures. One drug prevention program employed in 30 junior high schools in California and Oregon offers educational options to students. In simulations and by watching videos, teens learn reasons for resisting peer pressure. To combat tobacco and alcohol use, teens analyze commercial advertisements that promote substance abuse. Students also organize their own programs including "Just Say No" Clubs, or SADD (Students Against Driving Drunk) Chapters that ask students and parents to sign a contract pledging not to drink and drive.

Other schools which are taking the "get-tough" attitude towards teen drug abuse are stepping up enforcement strategies. Some states, like California, have declared schools "drug-free" zones. This means that there are stricter penalties for selling or possessing drugs within a certain radius of a school. In some schools, student athletes must consent to random drug testing as a condition of participation. Within school grounds, expulsions for drug-related delinquency or crimes are becoming more frequent. One parochial school in Los Angeles is forcing students to submit to drug testing while a school district in Illinois is now allowing drug-sniffing dogs to check lockers.

Tactics such as these raise questions about the civil liberties of students. While the Supreme Court has recognized that students are protected by the Fourth Amendment at school, their rights are not the same as adults. For example, courts have held that students, or their lockers, can be searched, if school officials have a reasonable basis to do so.

Everyone wants to stem teen drug abuse. No one wants to see young people physically abuse their bodies during such an important stage in their development. Drugs can impair emotional, psychological and mental development as well as physical growth. But what measures should be taken to prevent teen drug abuse?

Discussion Questions

1. What substance is most abused by teenaged youth?
2. What are some ways schools are reducing student drug abuse?
3. Write a one paragraph summary of the information in the reading covering the major points. Be prepared to share this summary with your classmates.

Resources

Drug Abuse Prevention Office
US Department of Education
400 Maryland Avenue SW, Rm. 4145
Washington, DC 20202
(202) 401-1599

Students Against Drunk Driving (SADD)
Box 800
Marlboro, MA 01752
(508) 481-3568

National Partnership to Prevent
Drug & Alcohol Abuse, Inc.
1110 Vermont Avenue NW, #428
Washington, DC 20005
(202) 429-2940

Mothers Against Drunk Driving (MADD)
511 East John Carpenter Freeway
Irving, TX 75062
(214) 744-6233

1998-99 MOCK TRIAL COMPETITION

This packet contains the official materials required by student teams to prepare for the 18th Annual California Mock Trial Competition, sponsored and administered by Constitutional Rights Foundation. The co-sponsors of the competition are the State Department of Education, the State Bar of California, the California Young Lawyers' Association, and the Daily Journal Corporation.

Each participating county will sponsor a local competition and declare a winning team from among the competing high schools. The winning teams from each county will be invited to compete in the state finals in Riverside, March 26-28, 1999. In May 1999, the winning team from the state competition will be eligible to represent California in the National High School Mock Trial Championship in St. Louis, Missouri.

The Mock Trial is designed to clarify the workings of our legal institutions for young people. In the Mock Trial, students portray each of the principals in the cast of courtroom characters, including counsel, witnesses, court clerks, and bailiffs. As student teams study a hypothetical case, conduct legal research, and receive guidance from volunteer attorneys in courtroom procedure and trial preparation, they acquire a working knowledge of our judicial system.

As in recent years, a pretrial motion is included as part of the case. The pretrial motion has a direct bearing on the charges in the trial itself. In both the pretrial motion and the trial, students present their cases in court before actual attorneys and judges. Since teams are unaware of which side of the case they will present until shortly before the competition begins, they must prepare a case for both the prosecution and defense. All teams must present both sides at least once.

Because of the differences that exist in human perception, a subjective quality is present in the scoring of the Mock Trial, as with all legal proceedings. Even with rules and evaluation criteria for guidance, no judge or attorney scorer will evaluate the same performance in the same way. While we do everything possible to maintain consistency in scoring, every trial will be conducted differently, and we encourage all participants to be prepared to adjust their presentations accordingly.

CALIFORNIA MOCK TRIAL FACT SITUATION

At approximately 7:45 a.m. on Friday, November 7, 1997, a shooting occurred at Millard High School in suburban Salem Cove. Nicky Blanc, a freshman at Millard High School, killed Jackie Potomski, a senior, by shooting Potomski in the chest with a hunting rifle. When confronted by the police, Blanc shot at the officers. One police officer returned fire, shooting and killing Blanc. A second police officer, Payton Tran, heard Blanc's last statement before dying.

While investigating the crime scene, Officer Tran was approached by K.D. Johnson, a close friend of Blanc. K.D. Johnson informed the officer of a conversation that took place the previous afternoon in the apartment of Nicky Blanc's older cousin, Shawn Brunetti. K.D. Johnson believed that Shawn Brunetti had planned the killing of Jackie Potomski and used Nicky Blanc to commit the crime. K.D. Johnson identified Shawn Brunetti to Officer Tran from among a crowd of students gathered near the crime scene.

Officer Tran approached and asked Shawn Brunetti some questions. Shawn Brunetti agreed to accompany the two police officers to Brunetti's apartment where it is alleged Brunetti and Blanc plotted to kill Potomski. At the apartment, the officers found an unlocked gun closet containing four guns and an empty space for a hunting rifle. Among the guns in the closet was an unregistered AK47 assault weapon. At that point, the officers Mirandized and arrested Shawn Brunetti.

During their investigation, the police contacted other witnesses for statements regarding the various relationships between Shawn Brunetti, Nicky Blanc and Jackie Potomski. This investigation revealed a long-standing rivalry among all three of them based on jealousy, loyalty, high school romance and an automobile accident in which Potomski killed Brunetti's dog.

CHARGES:

The prosecution charges Shawn Brunetti with three counts:

Count 1 - Murder (California Penal Code sections 187, 188, 189, and 192)

Count 2 - Conspiracy to commit murder (California Penal Code sections 182 and 184)
Overt Act 1: Loading the murder weapon
Overt Act 2: Providing the murder weapon

Count 3 - Unlawful possession of an assault weapon
(California Penal Code sections 12276, 12280, and 12285)

EVIDENCE:

Only the following items may be introduced at trial. The prosecution is responsible for bringing:

1. A faithful reproduction of the diagram of the crime scene, which appears in this packet. The reproduction should be no larger than 22" x 28".
2. A faithful reproduction of the diagram of the defendant's apartment, which appears in this packet. The reproduction should be no larger than 22" x 28".
3. A faithful reproduction of the cartoon by the defendant, which appears in this packet. The reproduction should be no larger than 22" x 28".

STIPULATIONS:

Prosecution and defense stipulate to the following:

1. There are no Fourth, Fifth or Sixth Amendment issues.
2. Nicky Blanc killed Jackie Potomski.
3. Shawn Brunetti is the owner of both the hunting rifle and the AK47, and the AK47 is not registered, as required by law.
4. The cartoon drawn by Shawn Brunetti depicts Shawn holding a gun in the air while stepping on a bear with the initials J.P
5. A telephone call between Nicky Blanc's home and Shawn Brunetti's apartment is a local call.
6. For the pretrial motion, only arguments related to the Second Amendment should be made.

PRETRIAL MOTION AND CONSTITUTIONAL ISSUE

This section of the mock trial contains materials and procedures for the preparation of a pretrial motion on an important constitutional issue. The **judge's ruling** on the pretrial motion will have a **direct bearing** on the admissibility of certain pieces of evidence and the possible outcome of the trial. The pretrial motion is designed to help students learn about the legal process and legal reasoning. Students will learn how to draw analogies, distinguish a variety of factual situations, and analyze and debate constitutional issues. These materials can be used as a classroom activity or incorporated into a local mock trial competition.

The pretrial motion challenges the constitutionality of the Roberti-Roos Assault Weapons Control Act of 1989, codified in California Penal Code Section 12275 et seq. The outcome of the pretrial motion will have a direct bearing on the retention or dismissal of Count III against the defendant.

ARGUMENTS

The defense will argue that Shawn Brunetti's Second Amendment right to keep and bear arms is infringed by California Penal Code Sections 12276 and 12280, which prohibit the manufacture, sale, transfer and unregistered possession of certain weapons. The defense will argue that the Second Amendment confers an individual right to keep and bear arms, and that the Second Amendment applies to states as well as to the federal government.

The prosecution will assert that the pertinent California Penal Code Sections do not violate any of Shawn Brunetti's personal rights. It will argue that the right conferred by the Second Amendment is a collective right on behalf of state militias, and as such is not infringed by California law. Alternatively, the prosecution will argue that even if the Second Amendment confers an individual right, it applies only to the federal government and not to states.

SOURCES

The sources for the pretrial motion arguments consist of excerpts from the U.S. Constitution, the California Penal Code, court opinions, and legal commentary. Only the factual situation on pages 12-13 and the sources on pages 15-25 can be used for the purposes of the pretrial motion.

The U.S. Constitution is the ultimate source of citizens' rights to keep and bear arms. But its language is subject to interpretation. Both federal and state courts have the power to interpret the Constitution. The U.S. Supreme Court's holdings are binding and must be followed by California courts. However, in general, the Supreme Court makes very narrow decisions based on the specific facts of the case before it. In developing arguments, either side can make arguments distinguishing the factual patterns of cited cases from one another and from pretrial motion facts.

California Appellate and Supreme Court cases possess the same binding effects on lower courts and must be followed as well. Cases from states outside of California, however, as well as legal commentary and dissenting opinions in cited cases, can be used for persuasive purposes only and are not binding on a California judge.

IMPORTANT NOTE: Because there are few Supreme Court and other appellate decisions on the Second Amendment, the packet includes other legal materials for students to use, including excerpts from dissenting opinions and law review articles dealing with gun control issues. The objective is to encourage students to argue the pretrial motion in broader legal and policy terms. Because the few relevant cases on the topic are relatively dated, these other legal materials are appropriate sources for the public policy focus of this year's pretrial motion.

LEGAL AUTHORITIES

U.S. Constitution:

U.S. Constitution, Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

U.S. Constitution, Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutes:

California Penal Code, Section 187 (a)

Murder Defined

Murder is the unlawful killing of a human being…with malice aforethought.

California Penal Code, Section 188

Malice Defined

Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart. When it is shown that the killing resulted from the intentional doing of an act with express or implied malice as defined above, no other mental state need be shown to establish the mental state of malice aforethought. Neither an awareness of the obligation to act within the general body of laws regulating society nor acting despite such awareness is included within the definition of malice.

California Penal Code, Section 189

First and Second Degree Murder

All murder which is perpetrated by means of a destructive device or explosive, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing…is murder of the first degree. All other kinds of murders are of the second degree…

To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of her/his act.

California Penal Code, Section 192

Involuntary Manslaughter

Manslaughter is the unlawful killing of a human being without malice…

> (b) Involuntary - in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner.

or without due caution and circumspection. This subdivision shall not apply to acts committed in the driving of a vehicle.

"Gross negligence," as used in this section, shall not be construed as prohibiting or precluding a charge of murder under Section 188 upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice, or upon facts showing malice, consistent with the holding of the California Supreme Court in *People v. Watson*, 30 Cal. 3d 290.

CALJIC 3.00 [California Jury Instructions]
Principals – Defined

Persons who are involved in [committing] [or] [attempting to commit] a crime are referred to as principals in that crime. Each principal, regardless of the extent or manner of participation is equally guilty. Principals include:

(1) Those who directly and actively [commit] [or] [attempt to commit] the act constituting the crime, or
(2) Those who aid and abet the [commission] [or] [attempted commission] of the crime.

CALJIC 3.01[California Jury Instructions]
Aiding and Abetting – Defined

A person who aids and abets the [commission] [or] [attempted commission] of a crime when he or she,

(1) with knowledge of the unlawful purpose of the perpetrator and
(2) with the intent or purpose of committing or encouraging or facilitating the commission of the crime, and
(3) by act or advice aids, promotes, encourages or instigates the commission of the crime.

[A person who aids and abets the [commission] [or] [attempted commission] of a crime need not be present at the scene of the crime.]
[Mere presence at the scene of a crime which does not itself assist the commission of the crime does not amount to aiding and abetting.]
[Mere knowledge that a crime is being committed and the failure to prevent it does not amount to aiding and abetting.]

CALJIC 3.03 [California Jury Instructions]
Termination of Liability of Aider and Abetter

Before the commission of the crime charged… an aider and abetter may withdraw from participation in that crime, and thus avoid responsibility for that crime by doing two things: First, she/he must notify the other principals known to her/him of her/his intention to withdraw from the commission of that crime; second, she/he must do everything in her/his power to prevent its commission.

California Penal Code, Section 182
Conspiracy

(a) If two or more persons conspire:

(1) To commit any crime.
(2) Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime…

They are punishable as follows:
When they conspire to commit…[a] felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of that felony…

All cases of conspiracy may be prosecuted and tried in the superior court of any county in which any overt act tending to effect such conspiracy shall be done.

(b) Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence.

California Penal Code, Section 184
Conspiracy - Act Requirement

No agreement amounts to a conspiracy, unless some act, beside such agreement, be done within this state to effect the object thereof, by one or more of the parties to such agreement and the trial of cases of conspiracy may be had in any county in which any such act be done.

California Penal Code, Section 12276
As used in this chapter, "assault weapon" shall mean the following designated semi-automatic firearms:
(a) All of the following specified rifles:
(1) All AK series including, but not limited to, the models identified as follows:
(A) …AK47…

California Penal Code, Section 12280
(b) …any person who, within this state, possesses any assault weapon, except as provided in this chapter [see Section 12285(a)], is guilty of a public offense and upon conviction shall be punished by imprisonment in the state prison, or in a county jail, not exceeding one year.

California Penal Code, Section 12285
(a) Any person who lawfully possesses an assault weapon, as defined in Section 12276, prior to June 1, 1989, shall register the firearm by January 1, 1991…with the Department of Justice pursuant to those procedures that the department may establish…

Federal Cases

1. *Presser v. Illinois*, 116 U.S. 252 (1886)

Facts: Defendant was indicted for violating an Illinois statute, which prohibited drilling or parading with arms through city streets by anyone other than U.S. troops or members of the organized volunteer militia. Defendant contended that the statute was invalid for conflicting with the Constitution, including the Second Amendment.

Holding: The pertinent sections of the Illinois statute do not infringe the right of the People to keep and bear arms. Additionally, the Second Amendment is a Limitation only upon the power of Congress and the national government.

The [Second] Amendment is a limitation only upon the power of Congress and the national government, and not upon that of the state. It was so held by this court in the case of *U.S. v. Cruikshank*, 92 U.S. 542, 553… The Second Amendment declares that it shall not be infringed, but this, as has been seen, means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the national government...

2. *Palko v. Connecticut*, 302 U.S. 319 (1937)

[The Bill of Rights, the first 10 amendments to the U.S. Constitution, did not originally apply to actions by state governments. For example, the First Amendment, which begins "Congress shall make no law respecting an establishment of religion," explicitly says that it only applies to Congress. Following the Civil War, the 14th Amendment was added to the Constitution. Its due process clause declared that no state shall "deprive any person of life, liberty, or property, without due process of law." Beginning in the 1920s, the Supreme Court interpreted this clause to mean that states could not deprive people of certain rights. These rights are "incorporated" into the due process clause of the 14th amendment. But what rights should be incorporated? Justice Benjamin Cardozo, writing for the court in *Palko*, decided that incorporation should apply only to those rights "implicit in the concept of ordered liberty" or "rooted in the traditions and conscience of our people as to be ranked as fundamental." Following this rule over the years, the Supreme Court has incorporated almost all the rights found in the Bill of Rights, except, however, the Second Amendment right to bear arms. Since *Palko*, the court has not ruled on this question, and therefore it is unclear if the Second Amendment applies only to action by the federal government or to action by the state government as well.]

3. *United States v. Miller*, 307 U.S. 174 (1939)

Facts: Miller carried an unregistered sawed-off shotgun from one state into another in violation of Section 11 of the National Firearms Act of 1934. The trial court voided Miller's indictment on the ground that the Firearms Act violated Miller's right to keep and bear arms under the Second Amendment.

Holding: The Supreme Court reversed the trial court, holding that the Second Amendment protects only those kinds of weapons that could be used by a member of the militia and asserting that there was no proof that the shotgun qualified.

In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than 18 inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.

The Constitution as originally adopted granted to the Congress power "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States..." With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view.

4. *Cases v. United States*, 131 F.2d 916 (1st Circuit 1942)

Facts: The defendant was convicted of violating several sections of the Federal Firearms Act, and appealed the decision in part on the grounds that the Act infringed upon his Second Amendment rights.

Holding: The Second Amendment was designed to foster a well-regulated militia as necessary to the security of a free state, and therefore does not confer an individual right to keep and bear arms.

We do not feel that the Supreme Court [in *Miller*] was attempting to formulate a general rule applicable in all cases... Because of the well known fact that in the so called "Commando Units" some sort of military use seems to have been found for almost any modern lethal weapon...the result would follow that the federal government would be empowered only to regulate the possession or use of weapons such as a flintlock musket or a matchlock harquebus. But to hold that the Second Amendment [thus] limits the federal government...is in effect to hold that the limitation of the Second Amendment is absolute.

5. *United States v. Oakes*, 564 F.2d 384 (10th Circuit 1977)

Facts: The defendant was convicted in District Court of knowingly possessing an unregistered machine gun, and he appealed in part on the grounds that the prosecution here violated his right to bear arms guaranteed by the Second Amendment.

Holding: The Second Amendment does not protect the keeping of an unregistered firearm that is not shown to have any connection to the militia, even if the defendant is technically a member of the Kansas militia.

[The defendant has presented] a long historical analysis of the Second Amendment's background and purpose from which he concludes that every citizen has the absolute right to keep arms. This broad conclusion has long been rejected. *United States v. Miller*... [Defendant] contends that, even if the Second Amendment is construed to guarantee the right to bear arms only to an organized militia, he comes within the scope of the amendment. He points out that under Kansas law, the state militia includes all "able-bodied male citizens between the ages of 21 and 45 years..." He further points out that he is a member of "Posse Comitatus," a militia-type organization registered with the state of Kansas.

The purpose of the Second Amendment as stated by the Supreme Court in *Miller* was to preserve the effectiveness and assure the continuation of the state militia. The Court stated that the amendment must be interpreted and applied with that purpose in view. To apply the amendment so as to guarantee appellant's right to keep an unregistered firearm which has not been shown to have any connection to the militia, merely because he is technically a member of the Kansas militia, would be unjustifiable in terms of either logic or policy.

6. *Quilici v. Village of Morton Grove*, 695 F.2d 261 (7th Circuit 1982)

Facts: The Village of Morton Grove passed an ordinance prohibiting the possession of handguns within the Village's borders. Local handgun owners brought an action to challenge the ordinance, in part on the grounds that it violated the Second Amendment. The district court found for the Village.

Holding: The Second Amendment does not apply to the states.

For the sake of completeness...we briefly comment on what we believe to be the scope of the second amendment... [I]t seems clear that the right to bear arms is inextricably connected to the preservation of a militia. This is precisely the manner in which the Supreme Court interpreted the Second Amendment in *United States v. Miller*...the only Supreme Court case specifically addressing that amendment's scope.... Because the Second Amendment is not applicable to Morton Grove and possession of handguns by individuals is not part of the right to keep and bear arms, [this city ordinance banning handguns] does not violate the Second Amendment.

***Quilici* dissent:** [This decision is] particularly disturbing as it sanctions governmental action which...impermissibly interferes with basic human freedoms.

The majority cavalierly dismisses the argument that the right to possess commonly owned arms for self-defense and the protection of loved ones is a fundamental right guaranteed by the Constitution. Justice Cardozo...defined fundamental rights as those rights "implicit in the concept of ordered liberty." Surely nothing could be more fundamental to the "concept of ordered liberty" than the basic right of an individual, within the confines of the criminal law, to protect his home and family from unlawful and dangerous intrusions.

7. *Printz v. United States*, 117 S.Ct. 2365, 2385-86 (1997)

Facts: The defendant challenged the Brady Act, a federal gun control law.

Holding: Part of the Brady Act violates the 10th Amendment.

Thomas, J., concurring: The Court today properly holds that the Brady Act violates the Tenth Amendment in that it compels state law enforcement officers to "administer or enforce a federal regulatory program...."

The Second Amendment . . . appears to contain an express limitation on the government's authority.... This Court has not had recent occasion to consider the nature of the substantive right safeguarded by the Second Amendment. *1. If, however, the Second Amendment is read to confer a personal right to "keep and bear arms," a colorable argument exists that the Federal Government's regulatory scheme, at least as it pertains to the purely intrastate sale or possession of firearms, runs afoul of that Amendment's protections. *2. As the parties did not raise this argument, however, we need not consider it here. Perhaps, at some future date, this Court will have the opportunity to determine whether Justice Story was correct when he wrote that the right to bear arms "has justly been considered, as the palladium of the liberties of a republic."

Footnote *1: Our most recent treatment of the Second Amendment occurred in *United States v. Miller*, in which we reversed the District Court's invalidation of the National Firearms Act, enacted in 1934. In *Miller*, we determined that the Second Amendment did not guarantee a citizen's right to possess a sawed-off shotgun because that weapon had not been shown to be "ordinary military equipment" that could "contribute to the common defense." The Court did not, however, attempt to define, or otherwise construe, the substantive right protected by the Second Amendment.

Footnote *2: Marshaling an impressive array of historical evidence, a growing body of scholarly commentary indicates that the "right to keep and bear arms" is, as the Amendment's text suggests, a personal right. [Citing various books and articles.] Other scholars, however, argue that the Second Amendment does not secure a personal right to keep or to bear arms. [Citing various other articles.] Although somewhat overlooked in our jurisprudence, the Amendment has certainly engendered considerable academic, as well as public, debate.

State Cases:

8. *State v. Dawson*, 272 N.C. 535 (1968)

Facts: Defendant and three other men were brought up on charges of, among others, being armed with dangerous weapons and bearing them without lawful excuse in a manner to cause terror and danger to local citizens.

Holding: Dismissed because evidence was too circumstantial. (Discussions of Second Amendment and North Carolina constitutional right to arms provision were included in opinion.)

At the time [the Second Amendment was introduced], the weapons of the militia were largely the private arms of the individual members; so the right of the people to keep and bear arms was the right to maintain an effective militia. If a citizen could be disarmed, he could not function as a militiaman in the organized militia. Today, of course, the State militia…is armed by the State government and privately owned weapons do not contribute to its effectiveness. While the purpose of the constitutional guarantee of the right to bear arms was to secure a well-regulated militia and not an individual's right to have a weapon in order to exercise his common-law right of self-defense, this latter right was assumed… North Carolina decisions have interpreted our Constitution as guaranteeing the right to bear arms to the people in a collective sense—similar to the concept of a militia—and also to individuals… These decisions have, however, consistently pointed out that the right of individuals to bear arms is not absolute, but is subject to regulation.

Other Sources:

9. Thomas Cooley, *Principles of Constitutional Law* (1898).

It may be supposed from the phraseology of this provision that the right to keep and bear arms was only guaranteed to the militia; but this would be an interpretation not warranted by the intent. The militia, as has been elsewhere explained, consists of those persons who, under the law, are liable to the performance of military duty, and are officered and enrolled for service when called upon. But the law may make provision for the enrolment of all who are fit to perform military duty, or of a small number only, or it may wholly omit to make any provision at all; and if the right were limited to those enrolled, the purpose of this guaranty might be defeated altogether by the action or neglect to act of the government it was meant to hold in check. The meaning of the provision undoubtedly is, that the people, from whom the militia must be taken, shall have the right to keep and bear arms, and they need no permission or regulation of law for the purpose. But this enables the government to have a well regulated militia; for to bear arms implies something more than the mere keeping; it implies the learning to handle and use them in a way that makes those who keep them ready for their efficient use; in other words, it implies the right to meet for discipline in arms, observing in doing so the laws of public order.

10. Steven Halbrook, "The Jurisprudence of the Second and Fourteenth Amendments," 4 *George Mason Law Review* 1 (1981).

[The holding in *Miller*] does not indicate that [defendant's] possessing the "sawed-off" shotgun was unprotected by the Second Amendment, but only that no evidence was presented on the matter and the facts were not of such common knowledge that judicial notice could be taken. Most significantly, the Court assumed that the weapon had not been shown to be "ordinary military equipment," which "could contribute to the common defense"—had such evidence been shown, the Court's wording implies that its possession by an individual would be protected.

[Quoting Beccaria, an 18th century political philosopher] "False is the idea of utility…that would take fire from men because it burns… The laws that forbid the carrying of arms are laws of such a nature. They disarm only those who are neither inclined nor determined to commit crimes. Can it be supposed that those who have the courage to violate the most sacred laws of humanity…will respect the less important and arbitrary ones…which, if strictly obeyed, would put an end to personal liberty…and subject innocent persons to all the vexations that the guilty alone ought to suffer? Such laws make things worse for the assaulted and better for the assailants; they serve rather to encourage than to prevent homicides, for an unarmed man can be attacked with greater confidence than an armed man."

11. David Hardy, "Armed Citizens, Citizen Armies," 9 *Harvard Journal of Law and Public Policy* 559 (1986).

The controversy over the meaning and ramifications of [the Second Amendment] involves a clash between…three schools of thought. One school, which may be considered the "individual rights" approach, holds that the Second Amendment recognizes a right protecting individual citizens in the peaceful ownership of private firearms for their private purposes. The second approach, broadly described as a "collective rights" [or "states rights"] approach, argues that the right embodied in the Second Amendment runs only in favor of state governments and seeks to protect their maintenance of formal, organized militia units such as the National Guard. In addition, there [is] a hybrid interpretation, which argues that the right protected is indeed one of individual citizens, but applies only to the ownership and use of firearms suitable for militia or military purposes.

12. Maynard Jackson, "Handgun Control: Constitutional and Critically Needed," 8 *North Carolina Central Law Journal* 189 (1976).

The most important considerations [of gun control legislation] are the preservation of public peace and the protection of the people against violence, which are also constitutional duties. When examining the right to keep and bear arms, this must be kept in mind. The pro-handgun argument is overly simplistic in its substance and in its conclusion. The [Second] Amendment and the history surrounding its enactment must be taken as a whole. The Second Amendment clearly refers to the "free state" needing protection and specifies that a "well-regulated Militia" is to give that protection. At the time of the amendment's drafting, almost every citizen of this young and struggling nation was considered a front-line soldier—a member of the militia. Therefore, it was natural for the writers to assign the right to bear arms to the "people"—meaning "the people" of a "well-qualified Militia."

13. Don Kates, "Handgun Prohibition and the Original Meaning of the Second Amendment," 82 *Michigan Law Review* 204 (1983).

In 1792 Congress, meeting immediately after the enactment of the Second Amendment, defined the militia to include the entire able-bodied military-age male citizenry of the U.S. and required each of them to own his own firearm.

The numerous cases citing *Presser v. Illinois*...for the proposition that the [Second] Amendment is not incorporated cannot survive rigorous analysis... To apply the *Presser* reasoning to negate [incorporation of the Second Amendment through the due process clause of the Fourteenth Amendment] today is to extend that case beyond its holding. However logical that extension might have seemed in 1886, it is absurd today when the result would be to contradict the entire doctrinal basis of modern incorporation of the Bill of Rights against state and local government.

In deciding whether a provision of the Bill of Rights is so fundamental as to justify incorporation, the Supreme Court has traditionally employed two criteria: The extent to which the right is rooted in our...common law heritage...and how highly the Founders themselves valued the right. The great esteem in which the Founders held the right to arms has already been exhaustively detailed... [T]he right to arms was in [the Founders'] day hailed as not only fundamental to their...legal and political heritage, but implicit in the premier and seminal natural law right of self-defense.

14. Thomas Paine, *Writings of Thomas Paine.*

The supposed quietude of a good man ailures the ruffian; while on the other hand, arms like laws discourage and keep the invader and the plunderer in awe, and preserve order in the world as well as property.

15. James Madison, *Federalist No. 46*

Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments, to which the people are attached, and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of. Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms.

16. Joseph Story, *Familiar Exposition of the Constitution of the United States* (1840).

One of the ordinary modes, by which tyrants accomplish their purposes without resistance, is, by disarming the people, and making it an offence to keep arms, and by substituting a regular army in the stead of a resort to the militia. The friends of a free government cannot be too watchful, to overcome the dangerous tendency of the public mind to sacrifice, for the sake of mere private convenience, this powerful check upon the designs of ambitious men.

The importance of this article will scarcely be doubted by any persons, who have duly reflected upon the subject. The militia is the natural defense of a free country against sudden foreign invasions, domestic insurrections, and domestic usurpations of power by rulers. It is against sound policy for a free people to keep up large military establishments and standing armies in time of peace, both from the enormous expenses, with which they are attended, and the facile means, which they afford to ambitious and unprincipled rulers, to subvert the government, or trample upon the rights of the people. The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them. And yet, though this truth would seem so clear, and the importance of a well regulated militia would seem so undeniable, it cannot be disguised, that among the American people there is a growing indifference... There is certainly no small danger, that indifference may lead to disgust, and disgust to contempt; and thus gradually undermine all the protection intended by this clause of our National Bill of Rights.

17. Jonathan Weiss, "A Reply to Advocates of Gun-Control Law," 52 *Journal of Urban Law* 577 (1974).

[Since the Second Amendment] is one of the Bill of Rights, it must be read as commanding certain societal absolutes and preventing the state from intruding on the enjoyment of those absolute rights. As Congress may not quell printing presses or deny juries, it may not deny guns if the language in one amendment is as commanding as the other.

[The constitutional arguments of gun control advocates] all begin from an unexamined premise: that the Constitution and its Bill of Rights can be read in bits and pieces so that each provision becomes a discrete passage. Such a reading of the First Amendment would have legislators proclaiming that individual states can pass laws abridging freedom of speech, since the amendment ties its prohibitions of government action to Congress... The amendments were not intended as separate and distinct entities, but rather to be taken in their entirety to achieve an integrated purpose.

18. From the American Civil Liberties Union's Statement on Gun Control (www.aclu.org/library/aaguns.html)

[T]he constitutional right to bear arms is primarily a collective one, intended mainly to protect the right of the states to maintain militias to assure their own freedom and security against the central government. In today's world, that idea is somewhat anachronistic and in any case would require weapons much more powerful than handguns or hunting rifles. The ACLU therefore believes that the Second Amendment does not confer an unlimited right upon individuals to own guns or other weapons nor does it prohibit reasonable regulation of gun ownership, such as licensing and registration....

Unless the Constitution protects the individual's right to own all kinds of arms, there is no principled way to oppose reasonable restrictions on handguns, Uzis or semi-automatic rifles.

If indeed the Second Amendment provides an absolute, constitutional protection for the right to bear arms in order to preserve the power of the people to resist government tyranny, then it must allow individuals to possess bazookas, torpedoes, SCUD missiles and even nuclear warheads, for they, like handguns, rifles and M-16s, are arms. Moreover, it is hard to imagine any serious resistance to the military without such arms. Yet few, if any, would argue that the Second Amendment gives individuals the unlimited right to own any weapons they please. But as soon as we allow governmental regulation of any weapons, we have broken the dam of Constitutional protection. Once that dam is broken, we are not talking about whether the government can constitutionally restrict arms, but rather what constitutes a reasonable restriction.

19. Eugene Volokh, "The Amazing Vanishing Second Amendment," 73 *New York University Law Review* 831 (1998).

[T]he Second Amendment's operative clause — "the right of the people to keep and bear arms shall not be abridged" —.... speaks of a "right of the people," the same language that's used immediately before in the Petition Clause [of the First Amendment] and shortly after in the Fourth Amendment. This seems like a strong suggestion that the right to keep and bear arms likewise belongs to each individual person.

[The commentators of the time confirm this suggestion.] Sir William Blackstone (1765) described the English right [of the people] as the "right of the subject." St. George Tucker (1803) treats Blackstone's "right of the subject" as equivalent to the Second Amendment's "right of the people." William Rawle (1829) likewise treats the Second Amendment as an expansion of the English right of "subjects," and implicitly assumes the right can be exercised even "by a single individual." Justice Joseph Story (1833) calls the American right a "right of the citizens." Nowhere is there any hint that the right belongs not to each person, subject, or citizen....

THE MOCK PRETRIAL MOTION HEARING

The following procedures and recommendations provide a format for the presentation of a mock pretrial motion in the local and state competitions, as well as for a classroom setting.

Specific Procedures for the Mock Pretrial Motion

1. Ask your coordinator if your county will present pretrial arguments before every trial of each round. We urge coordinators to require a pretrial motion hearing in as many rounds as possible, both for its academic benefits and to prepare the winning team for state finals, where it will be a required part of the competition. Performances will be scored according to the criteria included in this packet.

2. Prior to the opening of the pretrial motion arguments, the judge will have read the pretrial materials provided in the case packet.

3. Be as organized as possible in your presentation. Provide clear arguments so the judge can follow and understand your line of reasoning.

4. Arguments should be well substantiated with references to any of the pretrial sources provided with the case materials and/or any common sense or social-interest judgments. Do not be afraid to use strong and persuasive language.

5. Use the facts of *People v. Brunetti* in your argument. Compare them to facts of cases in the pretrial materials that support your position, or distinguish the facts from a case that disagrees with the conclusion you desire.

6. Review the constitutional arguments to assist you in formulating your own arguments.

7. Your conclusion should be a very short restatement of your strongest arguments.

WITNESS STATEMENT – Prosecution witness: Officer Payton Tran

I am 31 years old, and I have been a member of the Salem Cove police force since 1992.

On the morning of November 7, 1997, my partner and I were on our regular patrol duty by Millard High School. At around 7:45 a.m., we heard a gunshot and immediately rushed to the scene. When we arrived on campus, we found a student lying in the middle of the basketball court, shot in the chest. This victim was later identified as Jackie Potomski, a senior at Millard High.

Just as we located the victim, I saw a person I believed to be the perpetrator carrying a rifle and running from the oak tree in front of the school. The tree is located about 20-30 yards from the basketball court. We now know the perpetrator to be Nicky Blanc, a freshman at Millard High. My partner and I shouted "Freeze or we'll shoot!" but Blanc continued to run. I fired a warning shot, and Blanc stopped and faced us. Instead of dropping the weapon, Blanc swung the gun around, took aim and fired a shot at us. Believing that our lives were in imminent danger, my partner shot Blanc, who died a few minutes later. Though fatally wounded and gasping for breath, I heard Blanc say, "Shawn…Shawn…I think I am dying." About a minute later, Blanc said, "No more…bear hunting." Blanc had used a 30-caliber bolt action hunting rifle containing a five-shot clip. Three bullets remained in the clip. "Brunetti" was engraved on the stock of the rifle in ornate letters.

While my partner secured the crime scene, I began the investigation. K.D. Johnson, another Millard High student, approached me and told me about a conversation that Johnson heard the previous night between Blanc and Blanc's older cousin, Shawn Brunetti, at Brunetti's apartment. Johnson was clearly very upset by the shooting, shaking and speaking rapidly. Johnson insisted that the shooting had occurred exactly as Brunetti had discussed the night before. Johnson also informed me that Brunetti was present on campus and pointed to Brunetti in the crowd.

I approached the identified individual, confirmed that it was indeed Brunetti, and asked if Brunetti would mind answering a few questions. Brunetti agreed to the interview and told me that Blanc was a younger cousin, and that they had a very close relationship. Brunetti seemed surprisingly calm. Brunetti admitted to owning the hunting rifle that Blanc used to kill Jackie Potomski, and that Brunetti last saw Blanc the night before the shooting at Brunetti's apartment. I then asked for and received Brunetti's permission to search the apartment. My partner, Brunetti and I drove to the apartment in the patrol car, approximately one mile from the campus.

The apartment is modest, with a bed, a bathroom, a kitchen area and a living room. On the living room floor, I saw empty cans of beer and empty snack food bags. There is a gun closet, which is in plain view, against a wall in the bedroom. The closet has a padlock that was unlocked at the time of the search. Inside the closet, there were a total of four guns: a semi-automatic handgun, a revolver, a shotgun and an AK47, which my partner quickly determined to be unregistered in violation of California law. I noticed an empty rack fit for a long gun such as the rifle Blanc used that morning. Also, there was a variety of ammunition, including a full five-shot clip for a hunting rifle.

At that point, I Mirandized and searched Brunetti, finding a wallet and a key chain with a car key, two apartment keys, and a padlock key. My partner and I then took Brunetti into custody.

Later that day, we dusted the weapon used by Blanc for fingerprints. While both Blanc and Brunetti's prints were found on the hunting rifle and the ammunition clip, only Brunetti's prints were found on the three remaining bullets and the two used shells. We also checked the phone records for the Blanc home and Brunetti's apartment for November 6 and 7, 1997. The phone company does not keep a record of local calls, and no toll calls were listed.

WITNESS STATEMENT – Prosecution witness: K.D. Johnson

I am 14 years old and a freshman at Millard High School. I live with my parents at 1009 Bovine Road. Nicky Blanc and I were friends since grade school. I know Shawn Brunetti through my friendship with Nicky. I never liked Shawn; Nicky was always spending time with Shawn instead of with me. If it weren't for Nicky, I wouldn't have hung out with Shawn at all.

On Thursday afternoon, November 6, 1997, I went over to Shawn's apartment after basketball practice. I got there at about a quarter after five. It was the second time I had been to Shawn's apartment. Nicky and Shin-Tian Wei (Shinny), a friend of ours from Millard since August, were already there. Shinny went over more often than I did, and as far as I know Nicky was at Shawn's apartment almost every weekday.

As I entered the apartment, I heard Nicky talking about a run-in at school between Nicky and Jackie Potomski that morning. Jackie was a senior at Millard. Nicky and Shawn began hating Jackie about a year ago when Jackie started dating Chris Nichols. Chris dated Shawn before going out with Jackie. Nicky and I were only in middle school then, but I remember Nicky always telling me about how Jackie stole Chris from Shawn. Then, late last summer, right before school started, Jackie drove over Shawn's dog, Rags, and killed it. Both Nicky and Shawn were extremely upset about losing Rags. They never forgave Jackie for it and for the past five or six weeks, Nicky regularly provoked and harassed Jackie about being a dog killer, though nothing physical had ever resulted.

It was different on the morning of November 6th. I was with Nicky during the run-in with Jackie that day. Once again, Nicky walked up to Jackie and accused Jackie of murdering Rags – Nicky wanted Jackie to pay for killing Shawn and Nicky's best friend. As usual, Jackie explained that the dog's death had been an accident. Jackie insisted, "I didn't do it on purpose. Leave me alone." This time, though, Nicky wouldn't let it go. Nicky obviously was not happy with Jackie's answer, so Nicky started to push Jackie backwards. But Jackie reacted quickly and pushed Nicky back. Nicky got the worst of it, falling on the ground in front of a gathering crowd. Everyone began to laugh at Nicky. I helped Nicky up and we went to class.

That afternoon at Shawn's apartment, Nicky became visibly upset from telling that story to Shawn and Shinny, cussing a lot and jumping around the living room. What's more, Nicky was drinking beer with Shawn and Shinny. The beer made Nicky louder and more aggressive than I had ever seen before. This was the first time that I saw beer at Shawn's apartment, and I was not happy about it. I told them that we all were under age and shouldn't be drinking, but they ignored me and continued their stories.

After Nicky finished telling the story, Shawn said that Jackie should pay for what happened to Rags once and for all. Shawn stood up and declared, "It's time for us to bag the Russian bear." Nicky said, "I ought to get the AK47 and blow that bear away." Shawn responded, "Nah, I wouldn't use that. I'd use the hunting rifle." There were several guns scattered around the apartment, and Shawn picked up the hunting rifle, pretending to follow a moving target and pull the trigger. Shawn described how a big tree surrounded by bushes, like the oak on campus, would be a great spot for an ambush, that Shawn would wait there early in the morning until the bear passed by, and then Shawn would kill it. Next, Shawn asked Nicky to pick up the rest of the guns and bring them into the bedroom. While they were in the bedroom, I heard a noise that sounded like a gun being loaded. Even though they talked about a "Russian bear," I knew they were referring to Jackie, whose last name sounds Russian but isn't. So when they came back to the living room a few minutes later, I told them that they were crazy for talking about killing Jackie. Shawn said, "Chill out – we weren't talking about Jackie, just about a Russian bear." Shawn seemed to mean it, so I let it drop.

I stayed at Shawn's apartment for another half-hour or so watching TV. Shawn, Nicky and Shinny kept drinking beer. I wasn't having much fun watching them get drunk, so I left at about six o'clock. That was the last time I saw or talked to Nicky, Shawn or Shinny until after the tragedy the next day.

When I arrived at school the next morning and found out that Nicky had killed Jackie with a hunting rifle, all of a sudden everything clicked. The shooting occurred just as Shawn had described it the night before, except that Nicky was dead, too. When I was at the apartment, I didn't think that they could be serious about killing Jackie. I wanted to believe that they were just joking around, blowing off steam. I looked for a police officer so I could do what I should have done earlier – I told the police officer about what happened at Shawn's apartment and identified Shawn on campus, pointing Shawn out in the crowd.

I think Shawn is the mastermind behind this whole mess. As usual, poor Nicky was just manipulated. Nicky always worshipped Shawn like a hero. To please Shawn, Nicky did whatever Shawn said. Like that time last summer – we were all hanging out at the mall, and Shawn wanted to get a CD but didn't have enough money to buy it. Instead, Shawn told Nicky to stand by the electronic detector at the entrance of the music store so Shawn could toss the CD to Nicky without triggering the alarm. I knew we could get in lots of trouble, so I tried to stand up for Nicky, but everyone ignored me, including Nicky.

As I said, I knew Nicky for a long time, and I've known Shawn ever since Shawn moved to Salem Cove. This manipulation happened all the time, with Nicky obeying Shawn's every command. Nicky dressed, talked and acted like Shawn, doing everything possible to be just like Shawn. When Shawn told Nicky to steal money from Nicky's parents, Nicky did it. It didn't matter if it was right or wrong, as long as Shawn said it was okay. Shawn had so much power over Nicky. I personally believe that Nicky would be alive if Shawn had not created this plot.

WITNESS STATEMENT – Prosecution witness: René Lopez

I am 35 years old, and I live at 261 Prospect Lane. I received my BA in English and my MA in Education from UCLA. I also have my teaching credential. I have taught 11th grade English for the past ten years and have been the Vice-Principal and Dean of Students at Millard High School for three and a half years.

My responsibility as Dean of Students is to counsel and discipline students and to notify parents of their children's behavioral problems. These problems range from disrespect toward others or truancy to displays of violence. Both teachers and students can report instances of improper behavior to me. I then summon the particular student and try to ascertain the reason for her or his behavior. I seek to prevent further occurrences of the undesirable behavior, and if it is warranted, I take disciplinary action, the most severe being the recommendation for expulsion from the school.

I know Shawn Brunetti very well, both from my capacity as teacher and as Dean of Students. When I became Vice Principal/Dean of Students, Shawn was a freshman. Shawn's file grew steadily throughout the three years at Millard High. More recently, I saw Shawn numerous times for displays of aggression toward Jackie Potomski. The animosity between Shawn and Jackie began a year ago over a typical high school romantic conflict. The friction increased when Jackie ran over and killed Shawn's dog late last summer. During Shawn's attendance at Millard, Shawn repeatedly picked fights with Jackie (though only two fights actually resulted), called Jackie derogatory names, and even damaged Jackie's belongings, like ripping Jackie's backpack, spraying paint on Jackie's clothing, and so on.

I talked with Lee Brunetti, Shawn's parent, several times, but Shawn's conduct at school did not improve. In fact, on September 10, 1997, the first day of school, a teacher reported to me that Shawn brought an unloaded gun to school. I had the school's security guards locate and bring Shawn to my office. Apparently, Shawn decided to threaten Jackie by flaunting the gun. This was only a few days after Jackie killed Shawn's dog. I told Shawn that the school would not tolerate this kind of behavior, that I did not care that the gun wasn't loaded. After carefully considering our school policy, I recommended that Shawn be expelled. But after expulsion, I still had to deal with Shawn. On November 1, 1997, there was yet another encounter between Shawn and Jackie on campus, but before anything serious developed, I ordered Shawn off school grounds with a warning that Shawn was not allowed on campus for any reason.

As I mentioned, I was one of Shawn's teachers. Shawn was in my English class last year and was a pretty bright kid. Despite Shawn's violent inclination, Shawn had the ability to be a good student. Furthermore, Shawn was very independent and possessed traits of a leader.

I did not witness the shooting by Nicky Blanc on November 7, 1997. Later that morning, however, I did give Shawn's file to the investigating police. The file includes a cartoon drawn by Shawn in 1996 depicting Shawn holding a gun in the air while stepping on a caricature of a bear with the initials J.P. – not much of a disguise for Jackie Potomski. Shawn had submitted this cartoon to the school's newspaper for publication, but because of the inappropriate nature of the cartoon's content, I refused to allow the cartoon to be published.

WITNESS STATEMENT – Prosecution witness: Sam Blanc

I am 41 years old, and I live at 50 Canopy Street. I am Nicky's parent. My spouse and I moved to Salem Cove 20 years ago and have lived here ever since. I am the manager at a local restaurant.

Our relatives, Lee Brunetti and Shawn, moved to Salem Cove nine years ago after Lee's spouse died. We thought we could give each other more support by living in the same town. Our families regularly spent time together until four years ago when I became manager at the restaurant and my spouse got a promotion at work. We just didn't seem to have much free time any more.

Nicky and Shawn continued to be close. Because my spouse and I are usually very busy in the evenings, Nicky typically would visit Shawn right after school and return home fairly late, some time before midnight. My spouse and I both get home from work near midnight, and usually Nicky was already home and asleep. Nicky did spend a few nights at Shawn's place, but Nicky always left a message on the answering machine so we wouldn't worry.

On the night of November 6, 1997, I returned home at about 11:45 p.m. My spouse was on a business trip, so I was home alone with Nicky. When I came inside the house, I noticed that Nicky's door was closed, but the light was on inside, so I knocked to say goodnight. Nicky said, "I'm on the phone, but I'm going to sleep soon. Goodnight." Nicky seemed pretty involved in something, so I decided to check back in 15 minutes to make sure everything was okay. The light was out in Nicky's room, and when I tried to turn the doorknob, I found that it was locked, which was a little odd. I figured that Nicky was looking for some privacy and was probably having a late-night phone conversation with Shawn, as Nicky did every once in a while. The next time I saw Nicky, my child was dead.

Even though Shawn was Nicky's cousin, I was never happy with how much time Nicky spent with Shawn. I didn't like how they played together from the very beginning. It was clear that Shawn was in charge and Nicky just followed. This bothered me because I never wanted to see my child's potential limited. I worried that Nicky's personality would be defined by the disturbing relationship with Shawn.

Eventually, it seemed like Shawn became the mastermind of schemes, with Nicky doing the dirty work. But by then, Nicky and Shawn were so close, and Nicky was growing up so fast, my spouse and I could not separate them. I'll give you an example. A couple of years ago, Nicky went through a month-long stage where Nicky repeatedly took money from my wallet. When I finally confronted Nicky about it, Nicky said that it was Shawn's idea, that Shawn had reassured Nicky that I would not find out. Nicky confessed that I probably wouldn't have noticed if Nicky had taken only a few dollars at a time, as Shawn planned. Instead, Nicky took 20 dollars at a time, which was much easier for me to notice. A few days later, I asked Shawn about Nicky's excuse. Shawn admitted to planning this scheme, commenting offhandedly, "I knew I could count on Nicky to steal the money if I said to do it. Anyway, it's not like you need the money."

Shawn had control over Nicky in almost every aspect of a teenager's life. Nicky dressed like Shawn, talked like Shawn, listened to the same music, watched the same programs on television. I know I was busy, but I still noticed every time Nicky's taste in something changed, and when I would ask why, Nicky always answered, "I want to be like Shawn." I do not know much about the conflict between Jackie Potomski and Shawn. I heard from Nicky that Jackie Potomski started dating Shawn's friend a year ago and then ran over Shawn's dog late last summer. I remember that Nicky was very upset over the death of that dog.

I can't believe Nicky's gone, at such a young age. I don't think we will ever be able to forgive Shawn. It's just so unfair.

WITNESS STATEMENT – Defense witness: Shawn Brunetti, Defendant

I am 18 years old, and I live at 390 Highland Drive. I went to Millard High School before I was expelled in September 1997. I moved out of my parent's house in the summer of 1997 because I wanted to have more freedom. My parent is cool with it, helping me pay rent and buy groceries. Besides, I can take care of myself; I work the morning shift at a fast food restaurant down the street.

I own five guns. All were presents from my parents except for the AK47, which I purchased in 1996. When I was little, my parents really focused on teaching me how to use guns properly. They enrolled me in a gun safety class and later took me to a firing range for practice. I know how dangerous guns can be. That's why I lock the guns in a closet in my bedroom. I always keep that closet locked when I'm not home. Only I have the key to the padlock on the closet and the key to my apartment. I keep all of my keys on one key chain, and whenever I return to my apartment, I hang the key chain on a hook in the kitchen.

My cousin, Nicky Blanc, used to come over to my place regularly and sometimes slept overnight. Nicky's folks work pretty late, so Nicky used to hang out with me for company. A lot of people like to spend time in my apartment instead of at their homes because I don't boss them around like parents do. We usually just watch TV, talk and occasionally drink. Sometimes I'll show them my gun collection.

On November 6, 1997, Nicky and Shinny came over after school. I had a case of beer that another friend had left, so I offered them drinks. We started talking and watching music videos. When K.D. Johnson arrived later, Nicky was telling us about how Jackie Potomski embarrassed Nicky in front of a crowd at school after Nicky confronted Jackie about killing my dog, Rags. It's true, I didn't like Jackie. Jackie stole my first high school crush. Then, last summer Jackie ran over Rags with a car. It's because of Jackie that I was expelled from Millard. Even after I had left Millard, Jackie got me in trouble. On November 1, 1997, I stopped by Millard to pick up Nicky and go to the firing range. Just by chance, Jackie was nearby. Of course, as soon as people saw me there, with Jackie around, I was kicked off campus. Vice Principal Lopez thought I was there to pick a fight, but I wasn't.

Nicky and I were really close, like siblings. Nicky knew about all of this and understood how Jackie had repeatedly hurt me. Plus, Nicky loved Rags as much as I did. Rags was our dog. So I was not surprised that Nicky would pick up where I left off as far as Jackie was concerned, but I never thought it would go this far.

After I was expelled, things changed for me. I put all of that trouble behind me—Jackie, Rags and Millard High. I got tired of adolescent rivalries. I regret ever having brought a gun to school. I was just showing it to a friend, and it wasn't even loaded. Believe me, I heard the wake up call when I got kicked out of school. I put Jackie Potomski out of my mind and focused on my future. I had my steady job at the fast food restaurant, and I wanted to start over.

In fact, after Nicky finished telling us the story, I tried to calm Nicky down. I let Nicky blow off steam to release the anger and humiliation. It's tough being 14 and Nicky needed to talk about it, but then I tried to distract Nicky. I changed the subject and started talking about hunting. We were always talking about going hunting. I have taken Nicky to the firing range a few times, and Nicky and Shinny kept bothering me about taking them on a hunting trip. By that time I had had a few beers, but I remembered acting out a bear hunt. I pretended to aim at a bear with my hunting rifle. The rifle was in the living room with the rest of my guns because I had been cleaning them before everybody arrived. Then, I remembered this hunting catalogue that I wanted to show Nicky – I found a new gun that I wanted to buy. I asked Nicky to come into my bedroom to see it. I also wanted Nicky's help putting the guns away in the bedroom closet.

After that, we went back to our routine of watching TV, drinking and talking. K.D. left a little while later. I don't know when Nicky and Shinny left my apartment because I passed out on the couch. I woke up at about 7:30 a.m. the next morning. When I went to the kitchen to get something to drink, I noticed that my key chain was not on the hook where I left it the day before. I rushed into the bedroom and found the gun closet open with the key in the lock. When I noticed my rifle and one of the ammunition clips missing, I panicked. My first reaction was that someone had stolen my gun. Then it hit me that Nicky or Shinny probably took it. So I ran to school to ask them about it before they went to class. When I got to the campus, there was a big commotion. I heard from some students that Nicky had killed Jackie. I couldn't believe it. I rushed over to the crowd and saw both Jackie and my cousin dead. I was in shock. Time seemed to stand still. I remember a police officer coming up to me and asking me some questions. I agreed to bring the officers to my apartment, where I last saw Nicky.

The officers looked around in my apartment and arrested me when they saw my AK47 and found out that it wasn't registered. Then they took me to the police station.

WITNESS STATEMENT – Defense witness: Shin-Tian (Shinny) Wei

I am 18 years old, and I live at 733 Clearwater Street. I am a senior at Millard High School. My family moved to Salem Cove from New York last year. I became friends with Shawn, Nicky and K.D. during the summer of last year.

Sometimes I went along with Nicky to hang out at Shawn's place after school. The apartment is a cool hangout. It has a TV, a refrigerator, and a stereo system. We usually just watched TV, listened to music or talked. Shawn used to like to talk to Nicky and me about guns. Shawn owns five guns, and we sometimes got to handle them. We also talked about how we wanted Shawn to take us on a hunting trip some day. Occasionally there was beer in the apartment.

November 6th of last year was a typical day. After school, Nicky and I went to Shawn's apartment to hang out and to watch a six-hour marathon of music videos. Shawn was cleaning the guns out in the living room when we came by. We drank some beer, watched TV, and talked about the usual stuff—school, guns, hunting, and Shawn's job at the fast food restaurant. K.D. showed up later, just as Nicky started telling us about how Jackie Potomski, the kid who ran over Shawn's dog, shoved Nicky around and embarrassed Nicky in front of other students. I remember that because all the talking interrupted my favorite music video. I was trying to watch the TV, so I wasn't really paying attention to the conversation, but I think we began planning a hunting trip. I remember being very excited about finally going hunting with Shawn and Nicky, but there was also something about Russia, which I was not into at all. I mean, hunting, yes, but Russia, that's too far away. For some reason, K.D. was a little upset about our hunting trip, but I don't really know why. K.D. never really seemed to fit in with us. There was always some tension when K.D. was around. I can't remember exactly how much beer I had, probably six or eight cans, but I know that Shawn drank more than I did – Shawn drank most of the case.

K.D. didn't stay for very long. After K.D. left, Shawn, Nicky and I continued to watch videos and talk. Later in the evening, Shawn passed out from drinking too much. So when the video marathon ended at 9 p.m., Nicky and I decided to head home. We closed the door behind us, and I assumed the door was locked. After walking for about five minutes, Nicky said, "My wallet's missing. I'm going back to Shawn's apartment to look for it." I offered to wait because we only live a block away from each other. But Nicky told me not to bother waiting, just to go home. That was the last time I saw Nicky.

At school the next morning, I heard that Nicky had killed Jackie with a gun. I was shocked. I knew that Nicky didn't like Jackie, with all that happened between the two of them and Shawn, but I guess I didn't realize how deeply Nicky hated Jackie.

WITNESS STATEMENT – Defense witness: Lee Brunetti

I am 47 years old, and I live at 125 Oakwood Place. I am the parent of Shawn Brunetti. I am a physical therapist. My spouse passed away 10 years ago from a car accident.

Until the summer of 1997, Shawn lived at home with me. When Shawn decided to move out, I didn't want my child to leave home, but at the same time I did not want to be a stifling parent. Besides, Shawn is very independent and responsible, and I thought the move would only develop those qualities even more. I help Shawn pay rent and periodically give Shawn some money for food.

A few times when I visited Shawn at the apartment, Nicky was there, too. When Nicky was little, Nicky was a nice kid. Once Nicky entered eighth grade, though, Nicky started to become argumentative and disrespectful. Even though Shawn was older, Nicky always had to have a say in everything. Nicky no longer listened to Shawn like when they were younger. Whenever I saw them together, Nicky would start an argument with Shawn – they would fight about anything, from which band was the best to who got to control the TV remote control.

Moreover, Nicky was beginning to develop a violent temper. One time, I took Shawn and Nicky to the firing range, and someone bumped into Nicky. Nicky immediately became extremely upset and was ready to punch the guy in the face. Thankfully, Shawn calmed Nicky down, telling Nicky that it wasn't worth it to ruin a nice day on a rude person. Shawn acted like a protective sibling, trying to keep Nicky out of trouble. But even on the drive home, Nicky wouldn't drop the subject, saying, "I should've taken care of that guy."

No matter what people say, I cannot imagine Shawn getting involved with any violent plan. Shawn is a responsible, mature young person. Even as a young teenager, Shawn was never afraid to express feelings of love and kindness, especially when it came to Rags, the dog. During all of those years at Millard, Shawn was the school scapegoat. That school was not a good environment for Shawn. Shawn never fit in, and people took advantage of that fact, accusing Shawn of causing all sorts of trouble that had nothing to do with Shawn. Especially that Jackie Potomski kid. I know Shawn and Jackie had a long-standing conflict, but there was never any physical encounter as far as I know. Besides, Shawn was able to overcome those adolescent antics, for which I am very proud of Shawn.

As for Shawn's guns, just owning them does not make Shawn a violent person. People think that just because you own a gun, you are dangerous. With our family, it is just the opposite. My spouse and I taught Shawn about gun safety at a very young age, and Shawn has always been very responsible with guns. Shawn would never let anyone use those guns, not only for safety reasons, but also for sentimental reasons. Those guns are very special to Shawn because of the connection to my late spouse. Shawn would never want anything to happen to them.

WITNESS STATEMENT – Defense witness: Bobby Wright

I am 29 years old. I have been on the staff of the Salem Cove Firing Range for eight years. My responsibility is to patrol the firing range.

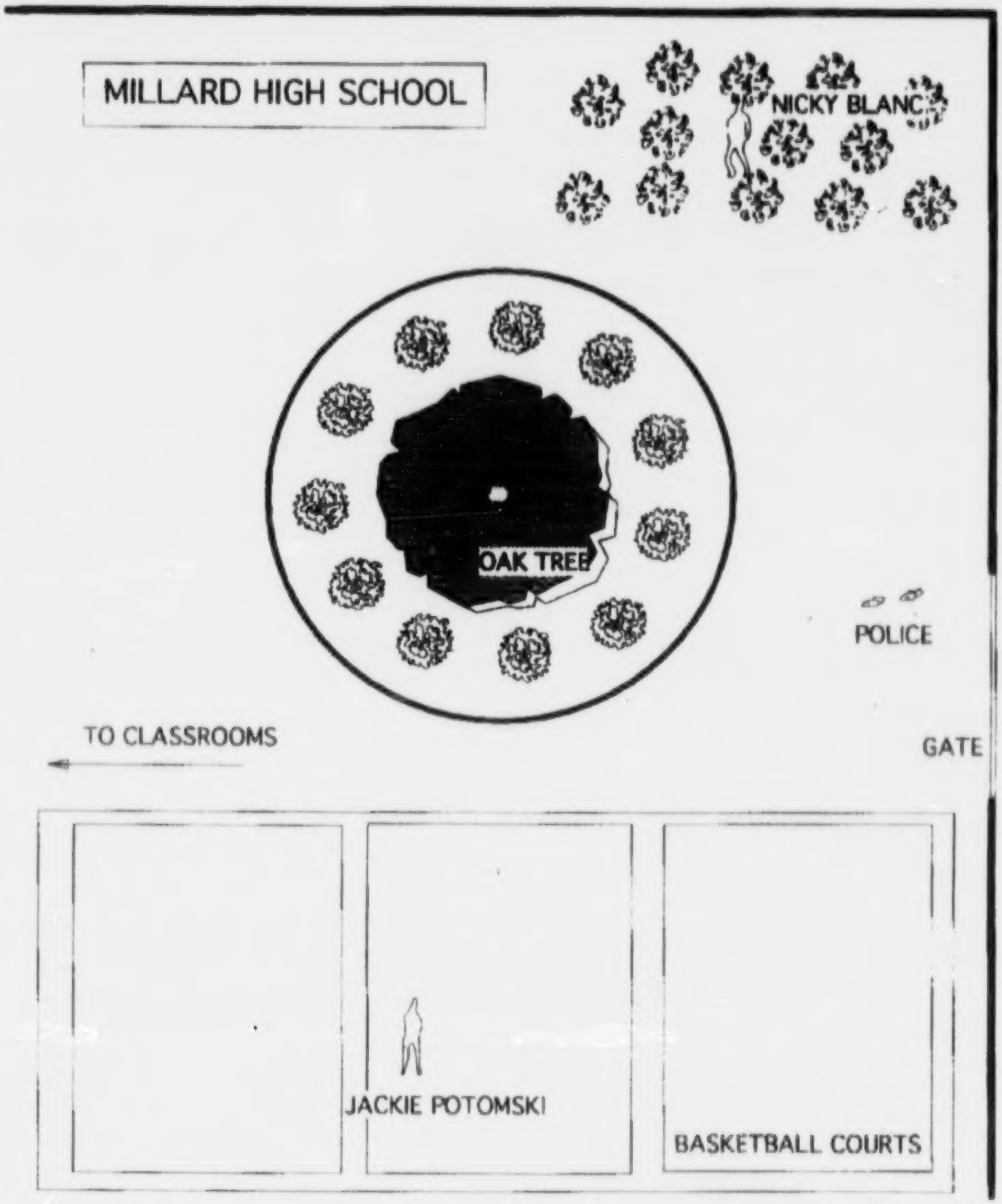
On the afternoon of November 1, 1997, Shawn Brunetti and Nicky Blanc came to the range. Shawn brought a rifle to practice with, but Nicky just came to watch. While on patrol, I was alerted to an argument between Shawn and Nicky. Nicky wanted to practice shooting with Shawn's rifle, but Shawn would not allow it. Shawn insisted that Nicky was too young to be using a gun, that guns were dangerous. The argument got heated, and Nicky even threatened to grab the rifle from Shawn. I had to intervene. I told Nicky that according to our policy, you have to be 18 years of age to shoot without a parent or guardian. As Shawn was not Nicky's parent or guardian, Nicky was not permitted to shoot. I threatened to kick Nicky out if Nicky did not stop arguing. Only then did Nicky calm down.

About 10 minutes later, I went back to check on Shawn and Nicky. They seemed to be best friends again and were eagerly talking about how Shawn's shooting skills were improving. When they noticed me, Shawn asked me if I knew anything about bear hunting – you know, where to go to find bear, what license is required, and so on. I told them that I didn't know much about it, but I'd heard that Russia is the best place in the world to hunt bears. That seemed to distract them for a while, so I left.

I have known Shawn for about as long as I have worked at the range. Shawn used to come regularly with Shawn's parent. I have always been very impressed by Shawn's handling of guns, especially when Shawn was really young. Shawn was always very careful with guns and displayed a great deal of maturity in this adult sport. Shawn struck me as a fun-seeking but responsible person. Only once did Shawn break our rules while shooting. It happened when Shawn came here alone, just after turning 18. I caught Shawn with a beer and knew that Shawn had been drinking. I did not call the police, but I did send Shawn home with a warning not to do something like that again if Shawn wanted to continue practicing at our range.

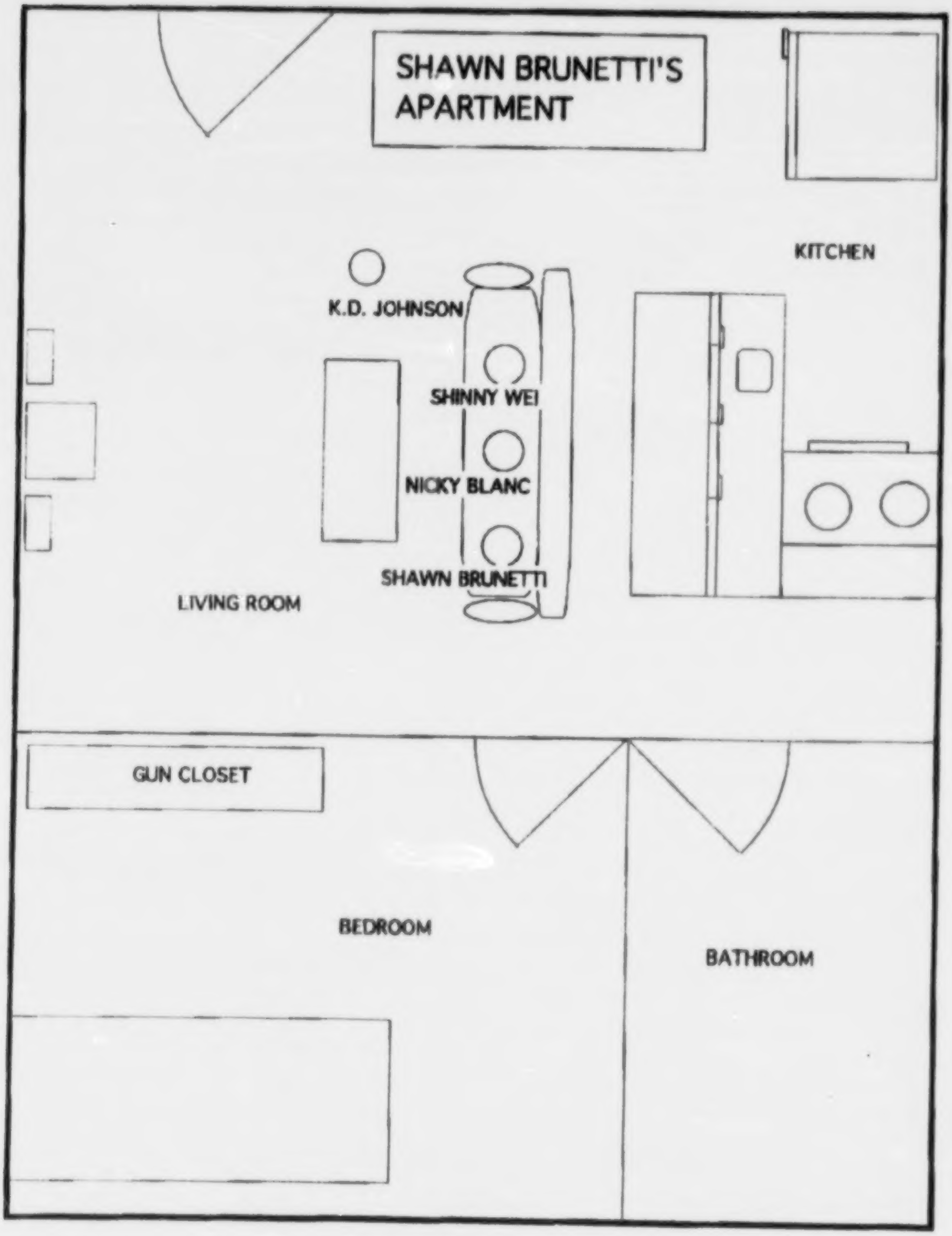
Shawn always seemed like a great person to be around.

OFFICIAL DIAGRAM

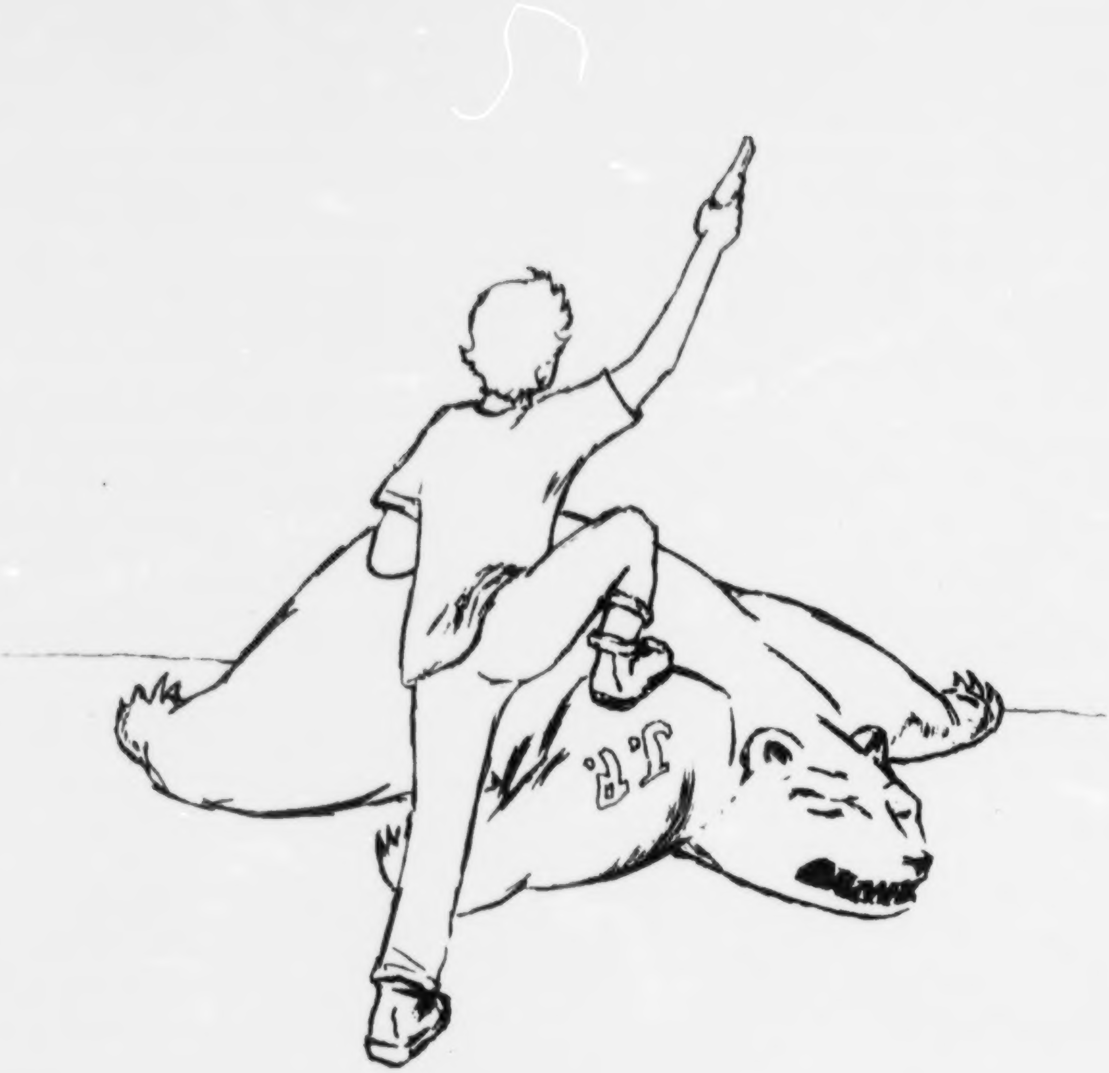


MILLARD HIGH SCHOOL
NICKY BLANC
OAK TREE
POLICE
TO CLASSROOMS
GATE
JACKIE POTOMSKI
BASKETBALL COURTS

OFFICIAL DIAGRAM


SHAWN BRUNETTI'S
APARTMENT
KITCHEN
K.D. JOHNSON
SHINNY WEI
NICKY BLANC
SHAWN BRUNETTI
LIVING ROOM
GUN CLOSET
BEDROOM
BATHROOM

OFFICIAL DIAGRAM



THE FORM AND SUBSTANCE OF A TRIAL

The Elements of a Criminal Offense

The penal (or criminal) code generally defines two aspects of every crime: the physical aspect and the mental aspect. Most crimes specify some physical act, such as firing a gun in a crowded room, and a guilty, or **culpable**, mental state. The intent to commit a crime and a reckless disregard for the consequences of one's actions are examples of a culpable mental state. Bad thoughts alone, though, are not enough. A crime requires the union of thought and action.

The mental state requirement prevents the conviction of an insane person. Such a person cannot form **criminal intent** and should receive psychological treatment rather than punishment. Also, a defendant may justify her/his actions by showing a lack of criminal intent. For instance, the crime of burglary has two elements: (1) breaking and entering (2) with the intent to steal. A person breaking into a burning house to rescue a baby has not committed a burglary.

The Presumption of Innocence

Our criminal justice system is based on the premise that allowing a guilty person to go free is better than putting an innocent person behind bars. For this reason, defendants are presumed innocent. This means that the prosecution bears a heavy burden of proof; the prosecution must convince the judge or jury of guilt beyond a **reasonable doubt**.

The Concept of Reasonable Doubt

Despite its use in every criminal trial, the term "reasonable doubt" is very hard to define. The concept of reasonable doubt lies somewhere between probability of guilt and a lingering possible doubt of guilt. A defendant may be found guilty "beyond a reasonable doubt" even though a possible doubt remains in the mind of the judge or juror. Conversely, triers of fact might return a verdict of not guilty while still believing that the defendant probably committed the crime. Reasonable doubt exists unless the trier of fact can say that she/he has an abiding conviction, to a moral certainty, of the truth of the charge.

Jurors must often reach verdicts despite contradictory evidence. Two witnesses might give different accounts of the same event. Sometimes a single witness will give a different account of the same event at different times. Such inconsistencies often result from human fallibility rather than intentional lying. The trier of fact (in the Mock Trial competition, the judge) applies her/his own best judgment to the evaluation of inconsistent testimony.

A guilty verdict may be based upon circumstantial (indirect) evidence. However, if there are two reasonable interpretations of a piece of circumstantial evidence, one pointing toward guilt of the defendant and another pointing toward innocence of the defendant, the trier of fact is required to accept the interpretation that points toward the defendant's innocence. On the other hand, if a piece of circumstantial evidence is subject to two interpretations, one reasonable and one unreasonable, the trier of fact must accept the reasonable interpretation even if it points toward the defendant's guilt. It is up to the trier of fact to decide whether an interpretation is reasonable or unreasonable.

ROLE DESCRIPTIONS

ATTORNEYS

The **pretrial motion attorney** presents the oral argument for (or against) the motion brought by the defense. You will present your position and answer questions by the judge, as well as try to refute the opposing attorney's arguments in your rebuttal.

Trial attorneys control the presentation of evidence at trial and argue the merits of their side of the case. They do not themselves supply information about the alleged criminal activity. Instead, they ntroduce evidence and question witnesses to bring out the full story.

The **prosecutor** presents the case for the state against the defendant(s). By questioning witnesses, you will try to convince the judge or jury (**juries are not used at state finals**) that the defendant(s) is guilty beyond a reasonable doubt. You will want to suggest a motive for the crime and will try to refute any defense alibis.

The **defense attorney** presents the case for the defendant(s). You will offer your own witnesses to present your client's version of the facts. You may undermine the prosecution's case by showing that the prosecution witnesses are not dependable or that their testimony makes no sense or is seriously inconsistent.

Trial attorneys will:

- Conduct direct examination.
- Conduct cross-examination.
- Conduct re-direct examination, if necessary.
- Make appropriate objections. Please note rule #15, page 70:
  > "Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony."
- Conduct the necessary research and be prepared to act as a substitute for any other attorneys.
- Make opening statements and closing arguments.

Each student attorney should take an active role in some part of the trial.

WITNESSES

You will supply the facts in the case. A witness may testify only to facts stated in or reasonably inferred from her/his witness statement or the fact situation (if she/he reasonably would have knowledge of those facts). Suppose that your witness statement asserts that you left the Ajax Store and walked to your car. On cross-examination, you are asked whether you left the store through the Washington or California Avenue off-ramp. Without any additional facts upon which to base your answer, you could reasonably name either off-ramp in your reply—probably the one closer to your car. Practicing your testimony with your attorney coach and your team will help you to fill in any gaps in the official materials. Imagine, on the other hand, that your witness statement included the statement that someone fired a shot through your closed curtains into your living room. If asked whether you saw who shot the gun, you would have to answer, "No." You could not reasonably claim to have seen the person through a periscope on the roof or a tear in the curtains. Neither fact could be found in or reasonably inferred from the case materials.

The fact situation is a set of indisputable facts from which witnesses and attorneys may draw reasonable inferences. The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses as identified. If you are asked a question calling for an answer that cannot reasonably be inferred from the materials provided, you must reply, "I don't know" or "I can't remember." It is up to the attorney to make the appropriate objections when witnesses are asked to testify about something that is not generally known or that cannot be reasonably inferred from the fact situation or a signed witness statement.

A witness can be impeached if she/he contradicts the material contained in her/his witness statement using the procedures outlined in this packet.

COURT CLERK, COURT BAILIFF

We recommend that you provide two separate people for these roles, but if you assign only one, then that person **must** be prepared to perform as clerk or bailiff in any given trial. In addition to the individual clerk and bailiff duties outlined below, this person can act as your **team manager**. She/he will be responsible for keeping a list of phone numbers of all team members and ensuring that everyone is informed of the schedule of meetings. In case of illness or absence, the manager should also keep a record of all witness testimony and a copy of all attorney notes so that another team member may fill in if necessary.

The clerk and bailiff have individual scores to reflect their contributions to the trial proceedings.

The court clerk and the bailiff aid the judge in conducting the trial. In an actual trial, the court clerk calls the court to order and swears in the witnesses to tell the truth. The bailiff watches over the defendant to protect the security of the courtroom. For the purpose of the competition, the duties described below are assigned to the roles of clerk and bailiff.

Before each round of competition, the court clerks, bailiffs, and unofficial timers must meet with a staff person at the courthouse about 15 minutes before the trial begins. At this time, their duties will be reviewed and their courtroom assignments will be confirmed. **Prosecution teams will be expected to provide the clerk for the trial; defense teams are to provide the bailiff.** The clerks and unofficial timers will be given the time sheets. After ensuring that all trials have a clerk and a bailiff, all will be dismissed to their respective school's trial.

Duties of the Court Clerk

When the judge arrives in the courtroom, introduce yourself and explain that you will assist as the court clerk
In the Mock Trial competition, the court clerk's major duty is to time the trial. **You are responsible for bringing a stopwatch to the trial. Please be sure to practice with it and know how to use it when you come to the trials.**

An experienced timer (clerk) is critical to the success of a trial.

INTERRUPTIONS IN THE PRESENTATIONS DO NOT COUNT AS TIME. For direct, cross and re-direct examination, record only time spent by attorneys asking questions and witnesses answering them. Do not include time when:

- witnesses are coming into the courtroom.
- attorneys are making objections.
- judges are questioning attorneys or witnesses or offering their observations.

When a team has two minutes remaining in a category, call out "Two"; when one minute remains, call out "One." Always speak loud enough for everyone to hear you. When time for a category has run out, announce "Time!" and **insist the students stop**. There is to be **no allowance for overtime under any circumstance**. This will be the procedure adhered to at the state finals. After

each witness has completed her/his testimony, mark down the exact time on the time sheet. Do not round off the time.

Duties of the Bailiff

When the judge arrives in the courtroom, introduce yourself and explain that you will assist as the court bailiff.

In the Mock Trial Competition, the bailiff's major duties are to call the court to order and to swear in witnesses. Please use the language below. In addition, you are responsible for bringing the witnesses from the hallway into the courtroom. Sometimes, in the interest of time and if your trial is in a very large courtroom, it will be necessary to ask someone sitting near the courtroom door to alert the witnesses in the hallway when you call them to the stand.

When the judge has announced that the trial shall begin, say:

"All rise, Superior Court of the State of California, County of_________, Department _______, the Honorable Judge __________ presiding, is now in session. Please be seated and come to order."

When you have brought a witness to testify, you must swear in the witness as follows:

"Do you solemnly affirm that the testimony you may give in the cause now pending before this court shall be the truth, the whole truth, and nothing but the truth?"

In addition, the bailiff is responsible for bringing to trial a copy of the "Rules of Competition." In the event that a question arises and the judge needs further clarification, the bailiff is to provide this copy to the judge.

PROCEDURES FOR PRESENTING A MOCK TRIAL CASE

Introduction of Physical Evidence

Attorneys may introduce physical exhibits, if any are listed under the heading "Evidence," provided that the objects correspond to the description given in the case materials. Below are the steps to follow when introducing physical evidence (maps, diagrams, etc.). All items are presented prior to trial.

1. Present the item to an attorney for the opposing team prior to trial. If that attorney objects to use of the item, the judge will rule whether it fits the official description.

2. When you first wish to introduce the item during trial, request permission from the judge: "Your honor, I ask that this item be marked for identification as Exhibit # ___."

3. Show the item to the witness on the stand. Ask the witness if she/he recognizes the item. If the witness does, ask her/him to explain it or answer questions about it. (Make sure that you show the item to the witness; don't just point!)

4. When you finish using the item, give it to the judge to examine and hold until needed again by you or another attorney.

Moving the Item Into Evidence

Exhibits must be introduced into evidence if attorneys wish the court to consider the items themselves as evidence, not just the testimony about the exhibits. Attorneys must ask to move the item into evidence at the end of the witness examination.

1. "Your honor, I ask that this item (describe) be moved into evidence as People's (or Defendant's) Exhibit #___, and request that the court so admit it."

2. At this point, opposing counsel may make any proper objections she/he may have.

3. The judge will then rule on whether the item may be admitted into evidence.

The Opening Statement

The opening statement outlines the case as you intend to present it. The prosecution delivers the first opening statement. A defense attorney may follow immediately or delay the opening statement until the prosecution has finished presenting its witnesses. A good opening statement should:

- Explain what you plan to prove and how you will prove it.
- Present the events of the case in an orderly sequence that is easy to understand.
- Suggest a motive or emphasize a lack of motive for the crime.

Begin your statement with a formal address to the judge:

"Your honor, my name is __________ (full name), the prosecutor representing the people of the state of California in this action;" or
"Your honor, my name is __________ (full name), counsel for __________ (defendant) in this action."

Proper phrasing includes:
"The evidence will indicate that ..."
"The facts will show..."

"Witness __________ (full name) will be called to tell..."
"The defendant will testify that . . ."

Direct Examination

Attorneys conduct direct examination of their own witnesses to bring out the facts of the case. Direct examination should:

- Call for answers based on information provided in the case materials.
- Reveal all of the facts favorable to your position.
- Ask the witness to tell the story rather than using leading questions, which call for "yes" or "no" answers. (An opposing attorney may object to the use of leading questions on direct examination. See "Leading Questions" page 53.)
- Make the witness seem believable.
- Keep the witness from rambling about unimportant matters.

Call for the witness with a formal request:

"Your honor, I would like to call __________ (name of witness) to the stand."

The witness will then be sworn in before testifying.

After the witness swears to tell the truth, you may wish to ask some introductory questions to make the witness feel comfortable. Appropriate inquiries include:

- The witness's name.
- Length of residence or present employment, if this information helps to establish the witness's credibility.
- Further questions about professional qualifications, if you wish to qualify the witness as an expert.

Examples of proper questions on direct examination:

"Could you please tell the court what occurred on ________ (date)?"
"What happened after the defendant slapped you?"
"How long did you see...?"
"Did anyone do anything while you waited?"
"How long did you remain in that spot?"

Conclude your direct examination with:

"Thank you, Mr./Ms. ____________ (name of witness). That will be all, your honor." (The witness remains on the stand for cross-examination.)

Cross-Examination

Cross-examination follows the opposing attorney's direct examination of her/his witness. Attorneys conduct cross-examination to explore weaknesses in the opponent's case, test the witness' credibility, and establish some of the facts of the cross-examiner's case whenever possible. Cross-examination should:

- Call for answers based on information given in Witness Statements or Fact Situation.
- Use leading questions which are designed to get "yes" and "no" answers.
- Never give the witness a chance to unpleasantly surprise the attorney.

In an actual trial, cross-examination is restricted to the scope of issues raised on direct examination. Because Mock Trial attorneys are not permitted to call opposing witnesses as their own, the scope of cross-examination in a Mock Trial is not limited in this way.

Examples of proper questions on cross-examinations:

"Isn't it a fact that...?"
"Wouldn't you agree that...?"
"Don't you think that...?"
"When you spoke with your neighbor on the night of the murder, weren't you wearing a red shirt?"

Cross-examination should conclude with:

"Thank you, Mr./Ms. ___________ (name of witness). That will be all, your honor."

Impeachment During Cross-Examination

During cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the witness. It may be done by asking questions about prior conduct that makes the witness's credibility (truth-telling ability) doubtful. Other times, it may be done by asking about evidence of certain types of criminal convictions.

Impeachment may also be done by introducing the witness's statement, and asking the witness whether she/he has contradicted something in the statement (i.e. identifying the specific contradiction between the witness's statement and oral testimony).

Example: (Prior conduct)

"Is it true that you beat your nephew when he was six years old and broke his arm?"

Example: (Past conviction)
"Is it true that you've been convicted of assault?"

(NOTE: These types of questions may only be asked when the questioning attorney has information that indicates that the conduct **actually** happened.)

Examples: (Using signed witness statement to impeach)

"Mr. Jones, do you recognize the statement I have had the clerk mark Defense Exhibit A?"
"Would you read the third paragraph aloud to the court?"
"Does this not directly contradict what you said on direct examination?"

Re-Direct Examination

Following cross-examination, the counsel who called the witness may conduct re-direct examination. Attorneys conduct re-direct examination to clarify new (unexpected) issues or facts brought out in the immediately preceding cross-examination **only**. They may not bring up any issue brought out during direct examination. Attorneys may or may not want to conduct re-direct examination. If an attorney asks questions beyond the issues raised on cross, they may be objected to as "outside the scope of cross-examination." It is sometimes more beneficial not to conduct re-direct for a particular witness. To properly decide whether it is necessary to conduct re-direct examination, the attorneys must pay close attention to what is said during the cross-examination of their witnesses.

If the credibility or reputation for truthfulness of a witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to "save" the witness through re-direct. These questions should be limited to the damage the attorney thinks has been done and should enhance the witness's truth-telling image in the eyes of the court.

Work closely with your attorney coach on re-direct strategies.

Closing Arguments

A good closing argument summarizes the case in the light most favorable to your position. The prosecution delivers the first closing argument. The closing argument of the defense attorney concludes the presentations. A good closing argument should:

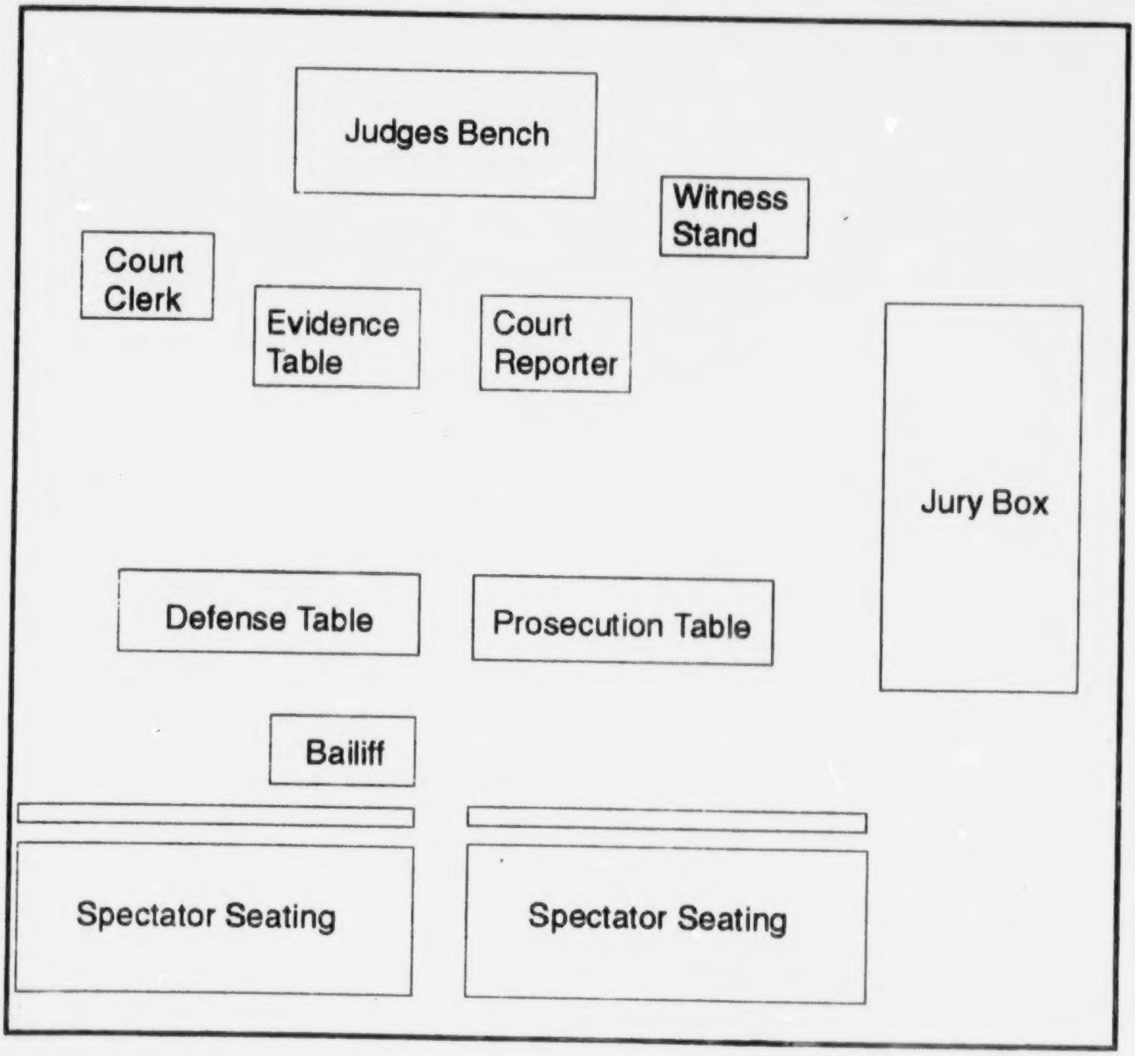
- Be **spontaneous**, synthesizing what **actually happened in court** rather than being "pre-packaged." **NOTE: Points will be deducted from the closing argument score if concluding remarks do not actually reflect statements and evidence presented during the trial.**
- Be emotionally charged and strongly appealing (unlike the calm opening statement).
- Emphasize the facts that support the claims of your side, but not raise any new facts.
- Summarize the favorable testimony.
- Attempt to reconcile inconsistencies that might hurt your side.
- Be well organized. (Starting and ending with your strongest point helps to structure the presentation and gives you a good introduction and conclusion.)
- **The prosecution** should emphasize that the state has proven guilt beyond a reasonable doubt.
- **The defense** should raise questions that suggest the continued existence of a reasonable doubt.

Proper phrasing includes:
"The evidence has clearly shown that . . . "
"Based on this testimony, there can be no doubt that . . . "
"The prosecution has failed to prove that . . . "
"The defense would have you believe that . . . "

Conclude the closing argument with an appeal to convict or acquit the defendant.

An attorney may use up to one minute of closing argument time for rebuttal. Only issues that were addressed in an opponent's closing argument may be raised during rebuttal.

DIAGRAM OF A TYPICAL COURTROOM


Judges Bench
Witness Stand
Court Clerk
Evidence Table
Court Reporter
Jury Box
Defense Table
Prosecution Table
Bailiff
Spectator Seating
Spectator Seating

MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

Criminal trials are conducted using strict rules of evidence to promote fairness. To participate in a Mock Trial, you need to know about the role that evidence plays in trial procedure. Studying the rules will prepare you to make timely objections, avoid pitfalls in your own presentations, and understand some of the difficulties that arise in actual cases. The purpose of using rules of evidence in the competition is to structure the presentations to resemble an actual trial.

Almost every fact stated in the materials will be admissible under the rules of evidence. All evidence will be admitted unless an attorney objects. Because rules of evidence are so complex, you are not expected to know the fine points. To promote the educational objectives of this program, students are restricted to the use of a select number of evidentiary rules in conducting the trial.

Reasonable Inference

Due to the format of the competition, testimony often comes into question as to whether it can be reasonably inferred given facts A, B, C, etc. It is ultimately the responsibility of the trier of fact to decide what can be reasonably inferred. However, **it is each student's responsibility to work closely within the fact situation and witness statements. No material fact may be fabricated.**

Objections

It is the responsibility of the party opposing the evidence to prevent its admission by a **timely and specific objection**. Objections not raised in a timely manner are waived. **An effective objection is designed to keep inadmissible testimony, or testimony harmful to your case, from being admitted. *A single objection* may be more effective than several objections.** Attorneys can and should object to questions that call for improper answers before the answer is given.

For the purposes of this competition, teams will be permitted to use only certain types of objections. The allowable objections are summarized on page 56. **Other objections may not be raised at trial.** As with all objections, the judge will decide whether to allow the testimony, strike it, or simply note the objection for later consideration. **Judges' rulings are final.** You must continue the presentation even if you disagree. A proper objection includes the following elements:

1) attorney addresses the judge,
2) attorney indicates that she/he is raising an objection,
3) attorney specifies what she/he is objecting to, e.g. the particular word, phrase or question, and
4) attorney specifies the legal grounds that the opposing side is violating.

Example: (1) "Your honor, (2) I object (3) to that question (4) on the ground that it is compound."

Allowable Evidentiary Objections

1. Facts in the Record

One objection available in the competition that is not an ordinary rule of evidence applies to the creation of new facts by an opposing witness. If you believe that a witness has testified to material information not provided in the Fact Situation or Witness Statements, use the following form of objection:

> **"Objection, your honor. The answer is creating a material fact that is not in the record," or**

"Objection, your honor. The question seeks material testimony that goes beyond the scope of the record."

2. Relevance

Relevant evidence makes a fact that is important to the case more or less probable than the fact would be without the evidence. To be admissible, any offer of evidence must be relevant to an issue in the trial. Relevant evidence may be excluded by the court if it is unfairly prejudicial, confuses the issues, or is a waste of time.

Either **direct** or **circumstantial** evidence may be admitted in court. Direct evidence proves the fact asserted without requiring an inference. A piece of circumstantial (indirect) evidence is a fact (Fact 1) that, if shown to exist, suggests (implies) the existence of an additional fact (Fact 2), (i.e. if Fact 1, then probably Fact 2). The same evidence may be both direct and circumstantial depending on its use

Example: Eyewitness testimony that the defendant shot the victim is **direct** evidence of the defendant's assault. Testimony establishing that the defendant had a motive to shoot the victim, or that the defendant was seen leaving the victim's apartment with a smoking gun, is **circumstantial** evidence of the defendant's assault.

Form of Objection: **"Objection, your honor. This testimony is not relevant to the facts of this case. I move that it be stricken from the record." or**

"Objection, your honor. Counsel's question calls for irrelevant testimony."

3. Laying a Proper Foundation

To establish the relevance of circumstantial evidence, you may need to **lay a foundation**. Laying a proper foundation means that, before a witness can testify to certain facts, it must be shown that the witness was in a position to know about those facts.

Sometimes when laying a foundation, the opposing attorney may object to your offer of proof on the ground of relevance, and the judge may ask you to explain how the offered proof relates to the case.

Example: If attorney asks a witness if he saw X leave the scene of a murder, opposing counsel may object for a lack of foundation. The questioning attorney should ask the witness first if he was at or near the scene at the approximate time the murder occurred. This lays the foundation that the witness is legally competent to testify to the underlying fact.

Form of Objection: **"Objection, your honor. There is a lack of foundation."**

4. Personal Knowledge

A witness may not testify about any matter of which the witness has no personal knowledge. Only if the witness has directly observed an event may the witness testify about it. Witnesses will sometimes make inferences from what they actually did observe. An attorney may properly object to this type of testimony because the witness has no personal knowledge of the inferred fact.

Example: From around a corner, the witness heard a commotion. Upon investigating, the witness found the victim at the foot of the stairs, and saw the defendant on the landing, smirking. The witness cannot testify over the defense attorney's objection that the defendant had pushed the victim down the stairs, even though this inference seems obvious.

Form of Objection: **"Objection, your honor. The witness has no personal knowledge to answer that question." or**

"Your honor, I move that the witness's testimony about...be stricken from the case because the witness has been shown not to have personal knowledge of the matter." (This motion would follow cross-examination of the witness that revealed the lack of a basis for a previous statement.)

5. Character Evidence

Witnesses generally cannot testify about a person's character unless character is an issue. Such evidence tends to add nothing to the crucial issues of the case. (The honesty of a witness, however, is one aspect of character always at issue.) In criminal trials, the defense may introduce evidence of the defendant's good character and, if relevant, show the bad character of a person important to the prosecution's case. Once the defense introduces evidence of character, the prosecution can try to prove the opposite. These exceptions are allowed in criminal trials as an extra protection against erroneous guilty verdicts.

Examples:

1. The defendant's minister testifies that the defendant attends church every week and has a reputation in the community as a law-abiding person. This would be admissible.

2. The prosecutor calls the owner of the defendant's apartment to testify. She testifies that the defendant often stumbled in drunk at all hours of the night and threw wild parties. This would probably not be admissible unless the defendant had already introduced evidence of good character. Even then, the evidence and the prejudicial nature of the testimony might outweigh its probative value making it inadmissible.

Form of Objection: **"Objection, your honor. Character is not an issue here," or**

"Objection, your honor. The question calls for inadmissible character evidence."

6. Opinion of Lay Witness (non-expert)

Opinion includes inferences and other subjective statements of a witness. In general, lay witness opinion testimony is inadmissible. It is admissible where it is (a) rationally based upon the perception of the witness AND (b) helpful to a clear understanding of the testimony. Opinions based on a common experience are admissible. Some common examples of admissible lay witness opinions are speed of a moving object, source of an odor, appearance of a person, state of emotion, or identity of a voice or handwriting.

Example: A witness could testify that, "I saw the defendant who was elderly, looked tired, and smelled of alcohol." All of this statement is proper lay witness opinion testimony as long as there is personal knowledge and a proper foundation.

Form of Objection: **"Objection, your honor. The question calls for inadmissible opinion testimony on the part of the witness. I move that the testimony be stricken from the record."**

7. Expert Witness and Opinion Testimony

An expert witness may give an opinion based on professional experience. A person may be qualified as an expert if she/he has special knowledge, skill, experience, training, or education. Experts must be qualified before testifying to a professional opinion. A qualified expert may give an opinion based upon personal observations as well as facts made known to her/him outside the courtroom. The facts need not be admissible evidence if it is the type reasonably relied upon by experts in the field. Experts may give opinions on ultimate issues in controversy at trial. In a criminal case, an expert may **not** state an opinion as to whether the defendant did or did not have the mental state in issue.

Example: A doctor bases her opinion upon (1) examination of the patient and (2) medically relevant statements of patient's relatives. Personal examination is admissible because it is relevant and based on personal knowledge. The statements of the relatives are inadmissible hearsay but are proper basis for opinion testimony because they are reasonably relevant to a doctor's diagnosis.

Form of Objection: **"Objection, your honor. There is a lack of foundation for opinion testimony," or**

"Objection, your honor. The witness is improperly testifying to defendant's mental state in issue."

8. Hearsay

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Hearsay is considered untrustworthy because the speaker of the out-of-court statement is not present and under oath and therefore cannot be cross-examined. Because these statements are very unreliable, they ordinarily are not admissible.

Testimony not offered to prove the truth of the matter asserted is, by definition, *not* hearsay. For example, testimony to show that a statement was said and heard, to show that a declarant could speak in a certain language, or to show the statement's effect on a listener is admissible.

Examples:

1. Joe is being tried for murdering Henry. The witness testifies, "Ellen told me that Joe killed Henry." If offered to prove that Joe killed Henry, this statement is hearsay and probably would not be admitted over an objection.

2. However, if the witness testifies, "I heard Henry yell to Joe to get out of the way," this could be admissible. This is an out-of-court statement, but is not offered to prove the truth of its contents. Instead, it is being introduced to show that Henry had warned Joe by shouting. Hearsay is a very tricky subject.

Form of Objection: **"Objection, your honor. Counsel's question calls for hearsay." or**

"Objection, your honor. This testimony is hearsay. I move that it be stricken from the record."

Out of practical necessity, courts have recognized certain general categories of hearsay that may be admissible. Exceptions have been made for certain types of out-of-court statements based on circumstances that promote greater reliability. **The exceptions listed below and any other proper responses to hearsay objections may be used in the Mock Trial. Work with your attorney coach on the exceptions that may arise in this case.**

a. **Admission by a party opponent**—a statement made by a party to the legal action (or someone identified with her/him in legal interest) of the existence of a fact relevant to the cause of her/his adversary. (An admission is not limited to words, but may also include the demeanor, conduct and acts of a person charged with a crime.)

b. **Excited utterance**—a statement made shortly after a startling event, while the declarant is still excited or under the stress of excitement.

c. **State of mind**—a statement that shows the declarant's mental, emotional, or physical condition.

d. **Declaration against interest**—a statement that puts declarant at risk of civil or criminal liability.

e. **Records made in the regular course of business**

f. **Official records and writings by public employees**

g. **Past recollection recorded**—something written by a witness when events were fresh in that witness's memory, used by the witness with insufficient recollection of the event and read to the trier of fact. (The written material is not admitted as evidence.)

h. **Statements for the purpose of medical diagnosis or treatment**

i. **Reputation of a person's character in the community**

j. **Dying declaration** - a statement made by a dying person respecting the cause and circumstances of her/his death, which was made upon that person's personal knowledge and under a sense of immediately impending death.

k. **Co-conspirator's statements** - (a) The statement was made by the declarant while participating in a conspiracy to commit a crime or civil wrong and in furtherance of the objective of that conspiracy; (b) The statement was made prior to or during the time that the party was participating in that conspiracy; and (c) The evidence is offered either after admission of evidence sufficient to sustain a finding of the facts specified in subdivisions (a) and (b) or, in the court's discretion as to the order of proof, subject to the admission of such evidence.

Allowable Objections for Inappropriately Phrased Questions

9. Leading Questions

Witnesses may not be asked leading questions by the attorney who calls them. A leading question is one that suggests the answer desired. Leading questions are permitted on cross-examination.

Example:

Counsel for the prosecution asks the witness, "During the conversation, didn't the defendant declare that he would not deliver the merchandise?"

Counsel could rephrase the question, "Will you state what, if anything, the defendant said during this conversation, relating to the delivery of the merchandise?"

Form of Objection: **"Objection, your honor. Counsel is leading the witness."**

10. Compound Question

A compound question joins two alternatives with "and" or "or," preventing the interrogation of a witness from being as rapid, distinct, or effective for finding the truth as is reasonably possible.

Example: "Did you determine the point of impact from conversations with witnesses and from physical marks, such as debris in the road?"

Form of Objection: **"Objection, your honor, on the ground that this is a compound question."**

The best response if the objection is sustained on these grounds would be, "Your honor, I will rephrase the question," and then break down the question accordingly. Remember that there may be another way to make your point.

11. Narrative

A narrative question is one that is too general and calls for the witness in essence to "tell a story" or make a broad-based and unspecific response. The objection is based on the belief that the question seriously inhibits the successful operation of a trial and the ultimate search for the truth.

Example: The attorney asks A, "Please tell us all of the conversations you had with X before X started the job."

The question is objectionable, and the objections should be sustained.

Form of Objection: **"Objection, your honor. Counsel's question calls for a narrative."**

Other Objections

12. Argumentative Question

An argumentative question challenges the witness about an inference from the facts in the case. A cross-examiner may, however, legitimately attempt to force the witness to concede the historical fact of a prior inconsistent statement.

Questions such as "How can you expect the judge to believe that?" are argumentative and objectionable. The attorney may argue the inferences during summation or closing argument, but the attorney must ordinarily restrict her/his questions to those calculated to elicit facts.

Form of Objection: **"Objection, your honor. Counsel is being argumentative." or**

"Objection, your honor. Counsel is badgering the witness."

13. Asked and Answered

Witnesses should not be asked a question that has previously been asked and answered. This can seriously inhibit the effectiveness of a trial.

Examples: 1. **On Direct Examination**— Counsel A asks B, "Did X stop for the stop sign?" B answers, "No, he did not." A then asks, "Let me get your testimony straight. Did X stop for the stop sign?"

Counsel for X correctly objects and should be sustained.

BUT: 2. **On Cross-Examination**— Counsel for X asks B, "Didn't you tell a police officer after the accident that you weren't sure whether X failed to stop for the stop sign?" B answers, "I don't remember." Counsel for X then asks, "Do you deny telling him that?"

Counsel A makes an **asked and answered objection**. The objection should be **overruled**. **Why?** It is sound policy to permit cross-examining attorneys to ask the same question more than once in order to conduct a searching probe of the direct examination testimony.

Form of Objection: **"Objection, your honor. This question has been asked and answered."**

14. Non-Responsive Witness

Sometimes a witness's reply is too vague and doesn't give the details the attorney is asking for, or she/he "forgets" the event in question. This is often purposely used by the witness as a tactic in preventing some particular evidence to be brought forth.

Form of Objection: **"Objection, your honor. The witness is being non-responsive."**

15. Outside the Scope of Cross-Examination

Re-direct examination is limited to issues raised by the opposing attorney on cross-examination. If an attorney asks questions beyond the issues raised on cross, opposing counsel may object to them.

Form of objection: **"Objection, your honor. Counsel is asking the witness about matters that did not come up in cross-examination."**

SUMMARY OF ALLOWABLE EVIDENTIARY OBJECTIONS FOR THE 1998-99 MOCK TRIAL

1. **Facts in Record:** "Objection, your honor. The answer is creating a material fact which is not in the record," or "Objection, your honor. The question seeks testimony which goes beyond the scope of the record."

2. **Relevance:** "Objection, your honor. This testimony is not relevant to the facts of this case. I move that it be stricken from the record," or "Objection, your honor. Counsel's question calls for irrelevant testimony."

3. **Foundation:** "Objection, your honor. There is a lack of foundation."

4. **Personal Knowledge:** "Objection, your honor. The witness has no personal knowledge to answer that question," or "Your honor, I move that the witness's testimony about _____ be stricken from the case because the witness has been shown not to have personal knowledge of the matter."

5. **Character:** "Objection, your honor. Character is not an issue here," or "Objection, your honor. The question calls for inadmissible character evidence."

6. **Opinion:** "Objection, your honor. The question calls for inadmissible opinion testimony (or inadmissible speculation) on the part of the witness."

7. **Expert Opinion:** "Objection, your honor. There is lack of foundation for opinion testimony," or "Objection, your honor. The witness is improperly testifying to defendant's mental state in issue."

8. **Hearsay:** "Objection, your honor. Counsel's question calls for hearsay," or "Objection, your honor. This testimony is hearsay. I move that it be stricken from the record."

9. **Leading Question:** "Objection, your honor. Counsel is leading the witness."

10. **Compound Question:** "Objection, your honor, on the ground that this is a compound question."

11. **Narrative:** "Objection, your honor. Counsel's question calls for a narrative."

12. **Argumentative Question:** "Objection, your honor. Counsel is being argumentative," or "Objection, your honor. Counsel is badgering the witness."

13. **Asked and Answered:** "Objection, your honor. This question has been asked and answered."

14. **Non-Responsive:** "Objection, your honor. The witness is being non-responsive."

15. **Outside Scope of Cross:** "Objection, your honor. Counsel is asking the witness about matters that did not come up in cross examination."

Official Judge, Scorer, and Teacher Information Packet

PEOPLE
V.
BRUNETTI

ISSUES OF HOMICIDE, CONSPIRACY, GUN CONTROL, AND THE RIGHT TO BEAR ARMS

Featuring a pretrial argument on the
Second and Fourteenth Amendments of the U.S. Constitution

Lesson 1. School Violence

OVERVIEW

This lesson examines school violence and policy proposals related to it. First, students read and discuss an article on school violence. Then in small groups, students simulate a school board deciding how much money to fund competing proposals for reducing school violence.

OBJECTIVES

Students will be able to:

1. Evaluate and decide on different policies addressing school violence.

2. Justify their decisions.

PREPARATION

You will need one copy of **Handout L** and **Handout M** for each student.

PROCEDURE

A. **Focus Discussion:** Ask students, "What sorts of violence problems do schools face?" Hold a brief discussion.

B. **Reading and Discussion:** Ask students to read **School Violence** on pages 2-5. Hold a class discussion using the **Points of Inquiry** questions on page 5:

   1. What factors do you think might contribute to school disorder and violence?

   2. Why does school violence often occur more frequently in middle schools than in high schools?

   3. Imagine that you are a school principal who must discipline a first-time violent offender. What action would you take?

   4. What actions would you take as a school principal to ensure the safety of your students?

C. **School Board Role Play:**

Step 1: Divide the class into groups of five. Inform students that each of these groups is going to role play the school board in Middletown, a small city. Tell them that the superintendent of schools has an important message for the board.

Step 2: Read aloud to the class this message from the superintendent:

> Good afternoon, members of the Board of Education.
>
> I am pleased to report that we have received the school safety grant that you directed me to apply for. The Middletown School District will receive $200,000 in grant funds. It is our job to use this money to make Middletown School District safer for our students. I await your instructions on how the School District should spend this money.

Make sure students understand that the board is to determine how to spend $200,000 to improve safety in and near schools in Middletown.

Step 3: Tell students that six proposals have been submitted to the board. Distribute **Handout L** to each student. Review each of the proposals. Answer any questions they may have.

Step 4: Distribute **Handout M**. This has instructions for the role play. Review it carefully with students. Make sure they understand that they can partially fund proposals if they want and that they cannot go over the $200,000 limit.

Step 5: Give students time for the role play. When groups are ready, have them report back their decisions. Record their decisions on the board.

Step 6: Debrief by asking: Which proposal seemed weakest? Strongest? Why?

Lesson 2. Introducing Methods for Conflict Resolution

Overview

In this lesson, students explore methods of conflict resolution. First, students are introduced to some basic conflict resolution methods. Next, students analyze hypotheticals to determine which methods work best to resolve specific conflicts.

Objectives

Students will be able to:

1. Identify conflict resolution methods.
2. Apply conflict resolution methods to hypotheticals.

Preparation

You will need one copy of **Handout M** and **Handout L** (from previous lesson) for each student.

Procedure

A. **Focus Discussion:** Ask students: "What types of programs might reduce school violence?" Hold a brief discussion.

B. **Reading and Discussion:** Ask students to briefly review **Group Action: Creating Alternatives to Violence** on pages 5-8. Answer any questions they may have about the conflict resolution programs described in the reading.

C. **Small-Group Activity: Applying Conflict Resolution Methods**

Step 1. Distribute a copy of **Handout M--Conflict Resolution Methods** to each student. Review the handout with the class and answer any questions.

Step 2. Divide the class into the same groups from the previous lesson. Redistribute **Handout L--Recognizing Flashpoints** to each group. Have students apply conflict resolution methods from **Handout M** to prevent the conflicts in each scenario from escalating into violence.

Step 3. Debrief by asking each group:

- Which conflict resolution did you choose to prevent violence in your scenario?
- What would happen if the characters applied conflict resolution methods to the scenario?

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Lesson 3. Creating Conflict Scenarios

Overview

In this lesson, students apply conflict resolution methods to incidents from their own experience. First, students work in groups to invent conflict scenarios that contain flashpoints and other elements from the chain of violence. Next, they exchange scenarios with other groups who identify elements from the chain of violence and apply conflict resolution methods to each scenario.

Objectives

Students will be able to

1. Describe conflict and the elements that lead to violence in terms of their own experience.
2. Apply conflict resolution methods to a hypothetical.

Preparation

You will need one copy of **Handout N** and **Handout M** (from previous lesson) for each student.

Procedure

A. **Focus Discussion:** Ask students: "What are some typical conflicts that can lead to violence?" Hold a brief discussion.

B. **Small-Group Activity: Creating Conflict Scenarios**

Step 1. Divide the class into groups of 3-5 students. Distribute one copy of **Handout N--Conflict Scenario Worksheet** to each group.

Step 2. Tell groups that they are going to work together to create scenarios that involve two or more individuals. Each scenario should describe a conflict and the steps it takes to escalate into violence. Explain that groups can use their own experience or their imaginations to create their scenarios.

Step 3. When students are finished, have each group exchange their scenarios with another group. Tell each group to:

- Identify elements from the chain of violence in the other group's scenario.
- Apply conflict resolution methods from **Handout M** to address the problems described in the other group's scenario.

Step 4. Debrief the activity by having each group list the elements they found in the other group's scenario and describe the methods they used to address the conflict.

Handout J - Proposed Programs

1. **Special program for disruptive students.** This program provides a special classroom at each school for students who are disruptive or who have been involved in violent behavior. A teacher and counselor will be specially trained to work closely with these students to improve their attitude, behavior, and study skills. Special attention will be paid to students with learning problems. If necessary, counseling services may be extended to families of these students. **Cost: $120,000**

2. **School uniform program.** All elementary and middle school students will be required to wear school uniforms unless parents opt out of the program. Each school will select its own uniform. The program will provide assistance to families who cannot afford to buy uniforms. **Cost: $20,000**

3. **Increased security equipment and personnel.** This plan provides metal detectors and hallway surveillance cameras on each middle and high school campus. One new security guard will be hired at each school to help staff the equipment. **Cost: $160,000**

4. **Conflict resolution program.** High school and middle school teachers will be trained in conflict resolution skills, which they will teach in various classes. Each middle and high school will develop a peer mediation program, in which students learn how to settle disputes among students. These peer mediators will also travel to elementary schools and train students in conflict resolution. **Cost $67,000**

5. **School security patrol.** This plan will pay for five full-time security officers to patrol the streets around schools in Middletown. These officers will patrol weekdays from 7 a.m. to 4 p.m. They will protect students traveling to and from school. These officers will also assist Middletown school security officers with problems on the school grounds and keep in radio contact with the Middletown Police Department. **Cost: $140,000**

6. **Parent Training**. This plan will pay for special night classes for parents. The classes will teach effective discipline techniques, how to deal with problem behaviors, and how to help students with school work. There will be classes for parents of students of all ages--from elementary school to high school. **Cost: $25,000**

Handout K – Instructions for School Board

Read the Proposed Programs carefully. Then, to help you make your decisions, do the following as a group:

1. Rank the programs according to which will be the most effective in reducing violence at the school.

2. Rank them again according to which will be the most cost effective. In other words, which will get the most results for each dollar spent?

3. Decide which programs you want funded and how much you will award each. Remember, you cannot exceed $200,000.

Program	**Rankings**		**Request**	**Award**
	Effective	**Cost Effective**		
Disruptive Students			**$120,000**	
School Uniform			**$ 20,000**	
Security Equipment			**$160,000**	
Conflict Resolution			**$ 67,000**	
Security Patrol			**$140,000**	
Parent Training			**$ 25,000**	
TOTAL			**$532,000**	**$200,000**

Handout L - Recognizing Flashpoints

Find the flashpoints and other elements from the chain of violence in each of these scenarios.

Scenario 1--Home

"Open the door, you little rat!" Yolanda was furious. Her younger brother, Tomas, had locked himself in the bathroom. He knew that Yolanda needed to get ready. "You're just jealous," Yolanda shouted through the door, "because you can't go to the game."

"You're always hogging the bathroom. It's my turn!" shouted Tomas. Yolanda was getting desperate. "Okay, punk. That's it. If you don't open that door, your dumb Gameboy is gonna end up on the sidewalk three stories down!"

"Yeah, sure," replied Tomas lazily. Yolanda put her ear to the door. Inside the bathroom, nothing was stirring.

"Here goes," called Yolanda. She opened Tomas' bedroom window. "If you don't come out, you can kiss your stupid Gameboy goodb--." Before Yolanda could finish, Tomas was on her back. The Gameboy flew out the window and smashed on the pavement below. Brother and sister rolled on the floor, pulling hair and pummeling each other.

Scenario 2--School

Darnell had moved to new neighborhood and didn't know a soul at Coolidge High. On his first day of school, Darnell was walking out of the cafeteria after lunch. A group of guys were having a mini food fight and hit Darnell on the back of the head with a peanut when he walked by. Darnell turned around and said good-naturedly, "Okay...So who threw that?"

"I did," said one of the guys at the table. "What's the problem?"

All eyes were on Darnell. He tried to be cool. "Just don't be throwing things at me," he said.

The guy stood up. "What are you going to do about it?" A group of kids gathered around Darnell and the Peanut Thrower.

"Keep it up," said Darnell. "You're gonna regret it."

"Oh yeah?" asked the Peanut Thrower. "How am I gonna regret it?" He pushed Darnell backwards. Laughter rippled through the onlookers.

Darnell pushed the Peanut Thrower back. Egged on by the crowd, Darnell and his assailant began to swap punches.

Scenario 3--The Street

Mickey had just gotten his driver's license. It had been a big deal for his mother to let him use the car.

As Mickey crossed the intersection at Spring and Main, a horn blared. Before he could swerve, there was a bone-jarring slam. Shaking, Mickey shut off the engine, opened the door, and stepped out.

An older guy in a leather jacket was staring at the smashed front end of a small, red sports car. "Look what you did to my car!" he screamed.

"Look what I did? You turned right in front of me," said Mickey.

"I ought punch some sense into you!" muttered the other driver. "You're supposed to stop for a red light, you idiot!"

Infuriated, Mickey stepped up to the other driver, "My light was green! Your car is halfway into my lane. You didn't even look!"

"You're full of it," shouted the other driver. He squinted at Mickey. "No wonder!" he said. "You're just a kid! Do you even have a driver's license?" Without thinking, Mickey took a punch at him. The next thing he knew, he was rolling on the ground, fighting with the other driver.

Scenario 4--Public Transportation

Erica got on the bus at Market Street, shook the rainwater off her scarf, and looked for a seat. She had been on her feet all afternoon, copying, collating, and delivering reports.

Every seat was taken. Suddenly, she heard someone mutter, "Get out of my way." Erica looked down. A skinny boy with stringy, wet hair was glaring up at her. "I can't see. You're blocking my way," hissed the boy

She looked around her. Outside, rain blurred the bus windows. Inside, people were jammed together. "What's there to look at anyway?" she asked.

"I don't like it when people press up against me," the wet-haired boy complained. "I can't see!" The boy's voice was getting higher as he spoke.

"Well, too bad!" Erica snapped back. "What are you? Some kind of a nut job? Why don't you take a pill or something--relax." Erica heard a low growl. Several other passengers looked around startled and suddenly, Erica felt a sharp, burning sensation in her side. The boy had risen halfway out of his seat and held something shiny in his hand. Erica screamed in pain and terror and grabbed her side. Her hand came away bloody.

Scenario 5--Store

To avoid the crowded lunchroom at Montuna High, some students headed for the fast food restaurants and convenience stores in the mall. Today, Malcolm had spent most of his lunch hour goofing around with his friends. Now he was hungry and in a hurry.

Malcolm ran into the Kim's store. A bunch of Malcolm's classmates were lined up at Mrs. Kim's cash register. As usual, she wore a frenzied look on her face. A lot of kids liked to hassle Mrs. Kim. She didn't speak much English and took everybody too seriously.

Malcolm quickly cruised the aisles, grabbing a sandwich and a bag of chips. Then, with his hands full, Malcolm remembered that he had promised to get lunch for his friend Letitia. He stuffed his purchases in his backpack and went back to pick up another sandwich.

When Malcolm got to the front of the store, all the other kids had left. Malcolm put his backpack down on the counter next to Letitia's sandwich and reached into his pocket for some money. Mrs. Kim rang up the sandwich. Then she lifted up Malcolm's backpack. "What's this!" she cried. Malcolm's sandwich and chips tumbled onto the counter, along with a jumble of Malcolm's school books and notepapers.

"I was going to pay you," Malcolm explained. "My hands were full and I..."

"You a thief?!" Mrs. Kim interrupted. "You steal from me?!" She threw Malcolm's backpack on the floor.

"Hey!" shouted Malcolm. He bent over to pick up his possessions. "You crazy old lady! I wasn't trying to steal anything!" When Malcolm straightened up, Mrs. Kim hit him on the shoulder with a broom handle. Malcolm grabbed the stick before she could hit him again. Blindly, without thinking, Malcolm struck Mrs. Kim with the broom handle. "Help!" cried Mrs. Kim. "Help me! Help me!"

The last thing Malcolm felt was a surge of adrenaline as Mrs. Kim pointed a gun at his heart.

Handout M - Conflict Resolution Methods

Conflict is a normal part of life. Below are some methods you can use to prevent flashpoints and other negative elements from growing out of conflict.

Method #1, Stay calm. Anger makes conflict dangerous. To stay calm, you can...

- Stop. Take a deep breath and count to 10.
- Recognize when you are angry. Don't let anger interfere with your goal to manage conflict.
- Ask for a "time out" to collect your thoughts and deal with your anger. You can always resolve the conflict at a later, agreed-upon time.

Method #2, Watch your language. Name calling, threats, and interruptions often create flashpoints and can lead to violence.

- Avoid name calling. Verbal attacks and threats make people defend themselves instead of dealing with the problem.
- Avoid "you" statements that accuse others of doing something wrong. "You" statements do not describe a conflict, they merely blame the other person.
- Focus on the cause of the problem. Remember your goal--to avoid flashpoints and resolve the conflict.

Method #3, Listen carefully. Not listening means you don't care how the other person feels. Being ignored makes most people angry.

- Focus on **what** is being said, not **how** it is being said. This will help you understand what the other person is trying to say.
- Restate the other person's position. By using your own words, you make sure you understand what the other person is saying.
- Ask questions for clarification.
- Acknowledge the other person's feelings by saying, "It sounds like you feel _____."

Method #4, State your position clearly. Use an "I" statement. An "I" statement has three parts.

- Part 1 of an "I" statement describes **what** the other person is doing. "You play loud music while I'm trying to work."
- Part 2 identifies **how** that behavior affects you. "It really makes me angry."
- Part 3 tells people **why** you feel the way you do. "Because I can't concentrate on my work when the music is turned up." Parts 1, 2, and 3 can be spoken together: "When you play loud music, it makes me angry because I can't concentrate on my work.

Method #5, Focus on solving the problem. Two heads are better than one. Use "we" statements. These statements address conflict by bringing people together as joint problem solvers.

- Ask how "we" can solve a problem or what "our" common goals are. This helps people shift the focus of the discussion from conflict to solution.
- Identify ways in which a problem affects both parties.
- Ask for help. Find a good listener who won't take sides.

Handout N - Conflict Scenario Worksheet

Work together to write a conflict scenario that includes as many elements as possible from the chain of violence. These elements include:

- misunderstanding
- different needs, desires, or ambitions
- barriers of race, language, age, or gender
- different points of view
- verbal attacks
- physical threats
- a flashpoint
- physical attacks (violence)

RULES OF THE COMPETITION

NOTE: At the first meeting of the Mock Trial team, the Code of Ethics appearing on page 1 should be read and discussed by students and their teacher.

I. ELIGIBILITY

To participate in the State Finals in Riverside (March 26-28, 1999), each county must implement the following procedures:

1. A county Mock Trial coordinator must be identified (usually through the county office of education).

2. Working in conjunction with CRF, the coordinator must plan and carry out a formal competition involving teams from at least two separate senior high schools in the county. These schools must be identified to CRF no later than **Monday, December 21, 1998**.

3. If a team is the only team from a county in which no county competition is conducted, the team will still be eligible for the State Finals. We STRONGLY recommend that such teams participate in the competition of another county to afford the team an opportunity to improve their skills.

4. All local county competitions must be completed by **March 1, 1999**.

5. A teacher/sponsor and attorney coach volunteer must be identified for each team by the coordinator.

6. All team members must be eligible under school district and state rules applicable to involvement in extracurricular activities. All team members must be registered at the school for which they are competing and be a member of the team at the time of both their county and the state competition.

The Mock Trial Team

7. A Mock Trial team must consist of a minimum of 9 students and may include up to a maximum of 20 students, all from the same school. At the local level, more students may be involved as jurors, but juries will not be used at the State Finals. At the State Finals, the mock trial is presented as a bench trial. We encourage you to use the maximum number of students allowable, especially at schools with large student populations.

8. Team Structure —Involvement of all possible team members in the presentation of the case is reflected in the team performance/participation score. The team consists of the following members:
   Two (2) Pretrial Motion Attorneys—one for the motion and one against the motion (maximum). Pretrial attorneys may not serve as trial attorneys during the same round.

   Three (3) Trial Attorneys for Prosecution (maximum)

   Three (3) Trial Attorneys for Defense (maximum)

   Four (4) Witnesses for Prosecution (all four must be called in one trial)

Four (4) Witnesses for Defense (all four must be called in one trial)

One (1) Clerk

One (1) Bailiff

Teams may have alternates listed on the roster, with a maximum of 20 students participating as performers and alternates.

We encourage you to use the maximum number of student attorneys. It is highly recommended that different trial attorneys conduct the opening argument and the closing argument, and that each trial attorney conduct at least one direct examination and one cross- examination.

We also encourage you to involve as many students as possible in support roles, such as researchers, understudies, and photographers.

II. CONDUCT OF THE PRETRIAL MOTION

Note: The pretrial motion (oral arguments only) is a mandatory part of the Mock Trial competition at the state level.

1. Only the fact situation (page 12) and the materials on pages 14-26 can be used as sources for the purposes of the pretrial motion.

2. Each student arguing a pretrial motion has four minutes to present a statement and two minutes for rebuttal. During these proceedings, students must be prepared to answer questions from the judge to clarify their position.

3. Each attorney is expected to display proper courtroom decorum and courtesy.

4. In order to present a position in the most persuasive manner, students should carefully review and become familiar with the materials provided in this packet. Additional background research may supplement their understanding of the constitutional issues at hand, but such supplemental materials may not be cited in arguments.

5. No written pretrial motion memoranda may be submitted to judges at local or state levels.

6. At the State Finals, there will be 30 seconds provided at the end of the pretrial motion for one student attorney from each performing team to confer with the team's attorney coach and teacher sponsor. The student attorney from each team will then have 30 seconds to orally note to the court any irregularities regarding the Rules of Competition, which the team would like the judge and scorers to be aware of. This time should not to be used to argue additional points of law or rebut opponent's argument. Regarding questions of rule violations, the judge's decision will be the final.

III. CONDUCT OF THE TRIAL

1. All participants are expected to display proper courtroom decorum and courtesy.

2. **Costumes and theatrical makeup are prohibited. In keeping with the educational philosophy and objectives of the Mock Trial program, teams should concentrate on presenting the trial in a realistic manner, with witnesses wearing appropriate**

courtroom attire and using realistic accents. Portrayals of racial or ethnic stereotypes are inappropriate and should not be used. At the State Finals, all scorers and presiders will be directed to disregard accents for scoring purposes.

3. The judge is the ultimate authority throughout the trial. If there is a rule infraction, it is solely the student attorneys' responsibility to bring the matter to the judge's attention before a verdict is rendered. There will be no bench conferences allowed. The judge will determine if a rule was, in fact, violated. Her/his word is final. The bailiff **must have** a copy of the rules of competition for reference. Unless a specific point deduction for a particular infraction is provided in these rules, each scorer will determine the appropriate amount of deduction individually.

4. Teachers and attorney coaches must identify themselves to the judge before the trial begins. Teacher sponsors and attorney coaches are to remain in the courtroom throughout the trial. Teams are required to submit team rosters (page 84) to presiding judges and scoring attorneys at all rounds of the State Finals. No other materials may be furnished to the presiding judges or scoring attorneys by student team members, teachers, or attorney coaches.

5. Gender-neutral names allow students of either gender to play the role of any witness.

6. All team members participating in a trial must be in the courtroom at the appointed time, ready to begin the round. Incomplete teams must begin the trial without their other members or with alternates.

7. After the judge has delivered her/his introductory remarks, witnesses participating in the trial (other than the defendant) must leave the courtroom until called to testify. After testifying, witnesses must remain in the courtroom for the remainder of the proceedings.

8. Once the trial has begun, there must be no spectator contact with student team members, whether in the hallway or the courtroom. Sponsors, teacher and attorney coaches, other team members, and spectators may not talk, signal, or otherwise communicate with the students. There will be an automatic deduction of **five points per score sheet** if the judge finds that this rule has been violated or if such conduct is observed by Mock Trial staff.

9. Recesses will not be allowed in local or state competitions for any reason.

10. The fact situation and the witness statements are the official case materials and comprise the sole source of information for testimony. The fact situation is a set of indisputable facts from which the attorneys may draw reasonable inferences. A witness may testify only to facts stated in or reasonably inferred from her/his witness statement or the fact situation (if she/he reasonably would have knowledge of those facts).

11 The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses. A witness can be impeached if she/he contradicts the material contained in her/his witness statement using the procedures as outlined on page 46.

12. All witnesses must be called. Cross-examination is required for all witnesses. If the direct examination team runs out of time without calling one or more witnesses, the cross-examination team will be automatically awarded five points for each witness not called, and the direct examination team will automatically receive a score of zero for the witness performance and direct examination for each witness not called. No other

witnesses may be called. If the cross-examination team runs out of time, the team will receive a cross-examination score of zero for each witness not cross-examined.

13. Prosecuting attorneys must provide the physical evidence listed under the heading "Evidence" in the case materials. No other physical evidence, if any, will be allowed. Additional charts or visual aids will not be allowed. Whether a team introduces, uses, and moves the physical evidence into evidence is entirely optional, but all physical evidence must be available at trial for either side to use. (See "Evidence" page 13.) If the prosecution team fails to bring physical evidence to court, it may be reflected in the team performance/participation score.

14. Attorneys may conduct re-direct examination when appropriate.

15. Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony.

16. Attorneys may use notes while presenting their cases. Witnesses are not allowed to use notes when testifying.

17. The Mock Trial Competition proceedings are governed by the "Mock Trial Simplified Rules of Evidence" on pages 49-56. Only specified types of objections will be recognized in the competition. Other more complex rules may not be used at the trial. Legal motions not outlined in the Official Materials will not be allowed.

18. There are no objections allowed during opening or closing arguments. (It will be the judge's responsibility to handle any legally inappropriate statements made in the closing, while scorers will also keep in mind the closing argument criteria.) One minute of this time may be used for rebuttal to opponent's closing argument. Only issues that were addressed in an opponent's closing argument may be raised during rebuttal. Formal reservation of rebuttal time will not be required at the State Finals.

19. You can only video/audio-tape a trial involving your school. Please check with your local Mock Trial coordinator regarding guidelines for video/audio-taping your competition. **Videotaping is for educational purposes only, and videotapes should not be shared with any other team before the State Finals without the permission of both teams videotaped. At the State Finals, videotaping is allowed in a courtroom only by the teams performing in that courtroom. CRF will NOT accept any videotape for complaint purposes.**

20. The official diagram establishes only relative positions. Because the scale is approximate, the diagram cannot be used to definitively establish distances. The issue of distances should be based on the witnesses' testimony and is a matter of fact for presiders.

21. At the State Finals, there will be 30 seconds provided at the end of the trial for one student attorney from each performing team to confer with the team's attorney coach and teacher sponsor. The student attorney from each team will then have 30 seconds to orally note to the court any irregularities regarding the Rules of Competition, which the team would like the judge and scorers to be aware of. This time should not to be used to argue additional points of law or rebut opponent's closing argument. Regarding questions of rule violations, the judge's decision will be the final.

IV. TIMING

1. Each team will have 40 minutes to present its case, including the pretrial motion. If no pretrial motion is presented, total time is 34 minutes. Time limits for each section are as follows:

Pretrial Motion	6 minutes
Opening Statement & Closing Argument	10 minutes
Direct & Re-direct Examination	14 minutes
Cross-Examination	10 minutes

The clock will be stopped for witnesses coming into the courtroom, attorneys making objections, and when judges are questioning attorneys and witnesses or offering their observations. The clock will not be stopped if witnesses are asked to approach the diagram or for other physical demonstrations. Time will not be rounded off.

Teams may divide the 10 minutes for opening statement and closing arguments, the 14 minutes for direct and re-direct examination, and the 10 minutes for cross-examination as desired (e.g. 3 minutes opening, 7 minutes closing). The time may be utilized however they choose, but the maximum allowable totals for each category must be observed. One minute of this time may be used for rebuttal to opponent's closing argument.

2. Two- and one-minute verbal warnings must be given before the end of each category. Students will be automatically stopped by the clerk at the end of the allotted time for each section. Thus, there will be no allowance for overtime.

3. One defense attorney at the counsel table or the bailiff may serve as an unofficial timer. This unofficial timer must be identified before the trial begins and may check time with the clerk twice during the trial, once during the prosecution's case-in-chief and once during the presentation of the defense's case. Any objections to the clerk's official time must be made by this unofficial timer during the trial, before the verdict is rendered. The judge shall determine if there has been a rule violation and whether to accept the clerk's time or make a time adjustment. Individuals not participating in trial presentation may not serve as unofficial timers.

4. At the end of the pretrial motion and the trial, the clerk will time the 30-second consultations and any formal presentations regarding irregularities. No extensions of time will be granted.

SUMMARY OF ORDER OF EVENTS FOR THE PRETRIAL MOTION AND TRIAL

Pretrial Motion

The prosecution and defense may have only one pretrial attorney each, presenting the arguments and the rebuttal for their team.

1. The hearing is called to order.

2. The judge asks the defense to summarize the arguments made in the motion. The defense has four minutes. The judge may interrupt to ask clarifying questions. The time spent answering the judge's questions is not included in the four-minute time limit.

3. The judge asks the prosecution to summarize arguments made in its opposition motion. The same conditions as in #2, above, apply to the prosecution.

4. The judge offers the defense two minutes of rebuttal time. The rebuttal time is used to counter the opponent's arguments. It is not to be used to raise new issues.

5. The judge offers the prosecution two minutes of rebuttal time. The same conditions as in #4, above, apply to the prosecution.

6. At the end of the oral arguments, the judge will rule on the motion.

7. Beyond having a direct effect on the charges, allowable evidence, and outcome of the trial, scores for the pretrial motion presentations will be added to each team's total scores in determining the winner of the trial.

Trial

1. Attorneys present physical evidence for inspection.

2. Judge states charges against defendant.

3. Prosecution delivers its opening statement.

4. Defense may choose to deliver its opening statement at this point or may wait to open until the prosecution has completed its case in chief.

5. Prosecution calls its witnesses and conducts direct examination.

6. After each prosecution witness is called to the stand and has been examined by the prosecution, the defense cross-examines the witness.

7. After each cross-examination, prosecution may conduct re-direct examination of its own witnesses if necessary.

8. Defense delivers its opening statement (if it did not do so earlier).

9. Defense calls its witnesses and conducts direct examination.

10. After each defense witness is called to the stand and has been examined by the defense, the prosecution cross-examines the witness.

11. After each cross-examination, defense may conduct re-direct examination of its own witnesses if necessary.

12. Prosecution gives its closing argument.

13. Defense gives its closing argument.

14. Prosecution and defense may present rebuttal arguments (optional).

15. Judge deliberates and reaches verdict.

16. Verdict is announced in court. (No scores or winners are announced at this time.)

SPECIAL INSTRUCTIONS FOR JUDGES AND ATTORNEYS

1. A student from each school will present a team roster before the trial to the judge and scoring attorney(s). This form will have names and designated trial roles. Please keep in mind Rule 15 (Conduct of the Trial):

   > Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony.

   Please ask team members (including teacher sponsors and attorney coaches) to introduce themselves before the trial.

2. Please fill in every box.

3. No fractions are allowed.

4. When filling out score sheets, **please make your decisions independently.** There can be no conferring.

5. The presiding judge is to fill out the top right corner of the score sheet, indicating which team she/he feels should be the overall winner in the event of a tie.

6. It is very important to read the fact situation and witness statements carefully. Because this is a **mock** trial, students will refer to specific facts and make references to certain pages in the text, and you need to be familiar with the pertinent details.

7. The fact situation and the witness statements are the official case materials and comprise the sole source of information for testimony. A witness may testify only to facts stated in or reasonably inferred from her/his witness statement or the fact situation (if she/he reasonably would have knowledge of those facts). The fact situation is a set of indisputable facts from which the attorneys may draw reasonable inferences. Reasonable inferences should be limited, and no material facts should be fabricated. Please keep in mind that witnesses can be impeached.

8. The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses. Witnesses can be impeached if they contradict the material contained in their witness statements. This rule is designed to limit, not eliminate, the need for reasonable inference by providing a familiar courtroom procedure.

9. Costumes and theatrical makeup are prohibited. In keeping with the educational philosophy and objectives of the Mock Trial program, teams should concentrate on presenting the trial in a realistic manner, with witnesses wearing appropriate courtroom attire and using authentic accents.

10. Please keep in mind that the Mock Trial competition involves timed presentations. One team's unreasonable running of the opposing team's time is inappropriate. Witnesses may be admonished, and poor sportsmanship may be reflected in the team performance score.

JUDGE'S ROLE

Pretrial Motion and Constitutional Issues

The pretrial motion section of this packet contains materials and procedures for the preparation of a pretrial motion on an important constitutional issue. It is designed to help students learn about the legal process and legal reasoning. Students will learn how to draw analogies, distinguish a variety of fact situations, and analyze and debate constitutional issues. Although mandatory in the State Finals, the pretrial motion is **optional on the local level**. The county coordinator will inform you whether this will be part of the local competition. If it is, then the judge will read the "Pretrial Motion Instructions" on page 76 to the participants and the pretrial motion will be presented prior to the Mock Trial.

The judge's ruling on the pretrial motion will have a direct bearing on the charges, allowable evidence, and the possible outcome of the trial. Please note that for the purposes of this mock trial, if the defense prevails at pretrial, Count 3 of the charges (Unlawful possession of an assault weapon) will be dropped.

Also note that when the pretrial motion is included, the score is added to each team's score when determining the winner of the trial.

Trial Proceedings: *People v. Brunetti*

To the fullest extent possible, please conduct the case as you would in an actual trial, familiarizing yourself with the case materials of *People v. Brunetti* before the trial. Although students will make errors, they must attempt to correct them as actual attorneys or witnesses would.

Please read the "Trial Instructions For Mock Trial Participants" on pages 76-77 of this packet to the students at the opening of the trial. Offering a few words of encouragement or insight into the trial process will help put the students at ease, and by **emphasizing the educational, rather than the competitive aspects** of the Mock Trial, you will help to bring the experience into proper perspective.

INSTRUCTIONS FOR JUDGES TO READ TO PARTICIPANTS PRIOR TO MOCK TRIAL PROCEEDINGS

"To help the attorneys and me check the team rosters, would each of you please state your name and role? Attorneys, please identify the witnesses you will call to testify today. Now, would the teacher-sponsor and attorney coach for each team please identify themselves to the court?

PRETRIAL MOTION INSTRUCTIONS FOR JUDGES TO READ TO PARTICIPANTS

"Both sides have four minutes to present their arguments. Defense will begin. I may interrupt to ask clarifying questions. Time spent answering my questions is not included in the four-minute time limit.

"At the conclusion of your arguments, each side will be offered two minutes of rebuttal time. Please remember that the rebuttal time is to be used to counter your opponent's arguments. It cannot be used to raise new issues.

"Under the rules of this competition, the same attorney presents the arguments and the rebuttal for her or his side.

"At the end of your presentations, I will rule on the motion.

"Please remember that according to the rules, the pretrial attorneys may not participate in the general trial presentation as trial attorneys.

"Scores for this pretrial motion presentation will be added to your total scores in determining the winner of the trial.

"Is counsel for the defense ready to begin?"

TRIAL INSTRUCTIONS FOR JUDGES TO READ TO MOCK TRIAL PARTICIPANTS PRIOR TO THE BEGINNING OF THE TRIAL

"Presenting trial attorneys and the defendant should be seated at the prosecution and defense tables. Witnesses testifying today must wait in the hallway until called to testify. After testifying, they must remain quietly in the courtroom.

"I must remind you that witnesses are permitted to testify only to the information about which they would reasonably have knowledge in the fact situation, their own witness statements, and what can reasonably be inferred from that information. Reasonable inferences should be limited, and no material facts should be fabricated. Also, please keep in mind that witnesses can be impeached for testimony contradictory to their witness statements.

"You must complete your presentations within the specified time limits. The clerk will signal you as your time for each section of the presentation begins to run out. When your total time for each section runs out, you will be stopped, even if you have not finished.

"Attorneys must call four witnesses. Please remember that objections are limited to the 'Summary of Allowable Objections for the1998-99 Mock Trial.'

"The following items may be offered as **evidence** at trial:

1. A faithful reproduction of the diagram of the crime scene, which appears in this packet. The reproduction should be no larger than 22" x 28".
2. A faithful reproduction of the diagram of the defendant's apartment, which appears in this packet. The reproduction should be no larger than 22" x 28".
3. A faithful reproduction of the cartoon by the defendant, which appears in this packet. The reproduction should be no larger than 22" x 28".

"Prosecution and defense **stipulate** to the following:
(You may opt to have the student attorneys read the stipulations for the record.)

1. There are no Fourth, Fifth or Sixth Amendment issues.
2. Nicky Blanc killed Jackie Potomski.
3. Shawn Brunetti is the owner of both the hunting rifle and the AK47, and the AK47 is not registered, as required by law.
4. The cartoon drawn by Shawn Brunetti depicts Shawn holding a gun in the air while stepping on a bear with the initials J.P.
5. A telephone call between Nicky Blanc's home and Shawn Brunetti's apartment is a local call.
6. For the pretrial motion, only arguments related to the Second Amendment should be made.

"At the end of the trial I will render a verdict of guilty or not guilty in relation to the charges brought. The teams will be rated based on the quality of their performances, independent of my verdict.

"Before court is called to order, I would like to make reference to the Code of Ethics of the competition. I am assured you have all read and discussed its significance with your teachers, as well as signed a written agreement to follow this code.

"Barring unforeseen circumstances, no recesses will be called. If for any reason a recess is necessary, team members should remain in their appropriate places and should have no contact with spectators.

"If there are no questions I will ask the witnesses to please step into the hallway, and the trial will begin."

SCORING MATERIALS FOR JUDGES AND ATTORNEYS

GUIDELINES FOR 0-5 SCORING METHOD

The following are general guidelines to be applied to each category on the scoresheet. They refer to both attorneys and witnesses. These guidelines provide a reasonable framework on which to base your judgment. It is strongly recommended that scorers use "3" as an indication of an average performance, and adjust higher or lower for stronger or weaker performances.

0 PENALTY	**Nonperformance of required presentation** -Failure to conduct direct examination of a witness (no time) -Failure to cross-examine a witness (no time) -Can apply to rule violations
1 FAR BELOW AVERAGE	**Unacceptable performance** -Disorganized -Shows lack of preparation and poor understanding of task and rationale behind legal procedure
2 BELOW AVERAGE	**Fair, weak performance** -Inadequate preparation and understanding of task -Awkward presentation
3 AVERAGE	**Meets required standards** -Fundamental understanding of task and adequate preparation -Acceptable but uninspired performance
4 ABOVE AVERAGE	**Good, solid performance** -Demonstrated a more fully developed understanding of task and rationale behind legal procedure
5 EXCELLENT	**Exceptional performance** -Demonstrated superior ability to think on her/his feet -Resourceful, original & innovative approaches -Portrayal was both extraordinary and realistic, not overly rehearsed or memorized -Witness examination and summation reflect the trial proceedings

EVALUATION CRITERIA

Students are to be rated on the six-point scale for each category according to the following criteria appropriate to each presentation. **Points should be deducted if criteria are not met or are violated.** If the pretrial motion is presented, each team may be awarded a maximum of 115 points by each scorer and/or judge, and 100 points if it is not. NOTE: Some scores are weighted, and therefore can affect a team's score more dramatically. These include the pretrial motion (x3), the closing argument (x3), the opening statement (x2), and team performance (x2).

1. **Pretrial Motion (x3)**
   - Clear and concise presentation of issues with appropriate use of authorities.
   - Well-developed, well-reasoned and organized arguments.
   - Solid understanding of the legal reasoning behind the arguments.
   - Responded well to judge's questions and maintained continuity in argument.
   - Effective rebuttal countered opponent's argument.

2. Opening Statement (x2)

- Provided a clear and concise description of the anticipated presentation.

3. Direct/Re-Direct Examination

- Questions required straightforward answers and brought out key information for her/his side of the case.
- Attorney effectively responded to objections made.
- Attorney properly introduced exhibits and, where appropriate, properly introduced evidence as a matter of record.
- Attorney properly phrased and rephrased questions and demonstrated a clear understanding of trial procedures.
- Attorney made **effective** objections to cross-examination questions of her/his witness when appropriate. Attorney did not make **unnecessary** objections.
- Throughout questioning, attorney made appropriate use of her/his time.
- Attorney used **only** those objections listed in the summary of evidentiary objections.

4. Cross-Examination

- Attorney made **effective** objections to direct examination (of the witness she/he cross-examined) when appropriate. Attorney did not make **unnecessary** objections.
- Attorney properly phrased and rephrased questions and demonstrated a clear understanding of trial procedures.
- Attorney exposed contradictions in testimony and weakened the other side's case.

5. Witnesses

- Witness was believable in her/his characterizations and presented convincing testimony.
- Witness was well prepared for answering the questions posed to her/him under direct examination and responded well to them.
- Witness responded well to questions posed under cross-examination without unnecessarily disrupting or delaying court proceedings.
- Witness testified to key facts in a consistent manner and avoided irrelevant comments.

6. Closing Argument (x3)

- Attorney's performance contained elements of spontaneity and was not based entirely on a prepared text.
- Attorney incorporated examples from the actual trial, while also being careful **not** to introduce statements and evidence that were not brought out in her/his particular trial.
- Attorney made an organized and well-reasoned presentation summarizing the most important points for her/his team's side of the case.
- If and when questioned by the judge, attorney gave well-reasoned, coherent answers.
- Effective rebuttal countered opponent's arguments.

7. Clerk and Bailiff

- The clerk or bailiff was present and punctual for trial.
- The clerk or bailiff performed her/his role so that there were no disruptions or delays in the presentation of the trial.

8. Team (x2)

- Team members were courteous, observed general courtroom decorum, and spoke clearly and distinctly.
- Team members displayed good sportsmanship to all competitors, regardless of trial results.

BEST COPY AVAILABLE

- **All** team members were involved in the presentation of the case and actively participated in fulfilling their respective roles.
- As much as possible, **each** trial attorney displayed examination and argumentation skills, and when appropriate, displayed knowledge of Simplified Rules of Evidence in making objections.
- Witnesses performed in synchronization with attorneys in presenting their side of the case
- Team members demonstrated cooperation and teamwork.
- **The behavior of teachers and attorney coaches may also impact team performance score.**

MOCK TRIAL SCORING CALCULATIONS

The percentage system described below is used to address the issue of artificially high and low scores skewing results of trials. We encourage all counties to adopt this method for consistency and familiarity when teams arrive at the state finals. This percentage method does not affect a power matching system.

Instead of adding the points from each judge into a grand total for each round of the competition, calculate the percentage difference between the two teams from the total number of points given in that trial. For example, in the chart below, Team A received 241 points and Team B received 247, creating a total of 488 points given in the trial. To calculate the percentages for both teams, you do the following:

Trial 1

Team A: 241 (team points)
488 (total, both teams) = .4939

Team B: 247 (team points)
488 (total, both teams) = .5061

Team C: 267 (team points)
543 (total, both teams) = .4917

Team D: 276 (team points)
543 (total, both teams) = .5083

Use the same process for subsequent trials. If you are **not** using a power matching system, these percentage scores are an alternative to cumulative raw scores. Please note that if percentage scores are released, teams will know whether they won or lost, since scores higher than .5000 always indicate a win.

NOTE: The percentage team scores for A & B and for C & D are within one percent, which reflects the relative closeness of the judging. **Team B, having won, will not be penalized unreasonably for having a much lower score than Team D**. Teams B & D will then be ranked by their percentage scores in the 1-0 bracket. This additional step de-emphasizes disproportionately high or low scores without affecting a team's win/loss record.

Following Round 2—Each team's percentage scores for each successive round should be added and then ranked in the appropriate win-loss bracket. Power matching can proceed as usual. For example:

Team A: .4939 (Round 1)(lost)
.5143 (Round 2)(won)
1.0082

2 wins - 0 losses	1 win – 1 loss	0 wins – 2 losses
	Team A 1.0082	

Team A would be ranked somewhere in the (1-1) bracket.

If this method is used after each round, the additional calculation **does not** have to be a part of cumulative point totals released to teams.

Constitutional Rights Foundation's California Mock Trial Competition
Judge/Attorney Score Sheet

Motion: Granted / Denied
Verdict: Count #1:G / NG #2:G / NG #3:G / NG

Presider's Tie Breaker ____________________

Scorer's Name ____________________ Presider's Name ____________________

Please refer to the guidelines and the evaluation criteria in your Mock Trial case packet to assist you in evaluating the performances. The judge's verdict should have no bearing on your scoring decisions. Do not announce any winners or scores at the end of this trial. Do not confer with anyone regarding scores. FILL IN ALL SCORE BOXES AND DO NOT USE FRACTIONS WHEN SCORING. Please indicate the verdict by circling the appropriate letters above.

0=Penalty 1=Far Below Average **2=Average** 3=Average **4=Above Average** 5=Excellent

PROSECUTION ____________________ DEFENSE ____________________

		PROSECUTION	DEFENSE	STUDENT'S NAME
PRETRIAL MOTION	(Defense presents)	☐ x3=___	☐ x3=___	____________ ____________
OPENING STATEMENTS		☐ x2=___	☐ x2=___	____________ ____________
PROSECUTION'S	Direct/Re Exam by Attorney	☐		____________
FIRST	Cross-Exam by Attorney		☐	____________
WITNESS	Witness Performance	☐		____________
PROSECUTION'S	Direct/Re Exam by Attorney	☐		____________
SECOND	Cross-Exam by Attorney		☐	____________
WITNESS	Witness Performance	☐		____________
PROSECUTION'S	Direct/Re Exam by Attorney	☐		____________
THIRD	Cross-Exam by Attorney		☐	____________
WITNESS	Witness Performance	☐		____________
PROSECUTION'S	Direct/Re Exam by Attorney	☐		____________
FOURTH	Cross-Exam by Attorney		☐	____________
WITNESS	Witness Performance	☐		____________
DEFENSE'S	Direct/Re Exam by Attorney		☐	____________
FIRST	Cross-Exam by Attorney	☐		____________
WITNESS	Witness Performance		☐	____________
DEFENSE'S	Direct/Re Exam by Attorney		☐	____________
SECOND	Cross-Exam by Attorney	☐		____________
WITNESS	Witness Performance		☐	____________
DEFENSE'S	Direct/Re Exam by Attorney		☐	____________
THIRD	Cross-Exam by Attorney	☐		____________
WITNESS	Witness Performance		☐	____________
DEFENSE'S	Direct/Re Exam by Attorney		☐	____________
FOURTH	Cross-Exam by Attorney	☐		____________
WITNESS	Witness Performance		☐	____________
CLERK (Prosecution)	BAILIFF (Defense)	☐	☐	
CLOSING ARGUMENTS		☐ x3=___	☐ x3=___	____________ ____________
PARTICIPATION AND TEAM PERFORMANCE		☐ X2=___	☐ X2=___	
TOTAL		______	______	

AWARD NOMINATION SHEET

PROSECUTION NAME ______________________

DEFENSE NAME ______________________

Please list only the names of students whose presentations were noteworthy and would merit special recognition:

Outstanding Defense Pretrial Motion Attorney______________________

Comments______________________

Outstanding Prosecution Pretrial Motion Attorney______________________

Comments______________________

Outstanding Prosecution Attorney______________________

Comments______________________

Outstanding Prosecution Witness______________________

Comments______________________

Outstanding Defense Attorney______________________

Comments______________________

Outstanding Defense Witness______________________

Comments______________________

Scoring should be independent.

Work space:

TEAM ROSTER SHEET

TEACHERS ARE REQUIRED TO SUBMIT COMPLETED ROSTERS TO JUDGES AND SCORERS BEFORE TRIAL BEGINS

Prosecution	Defense
Pretrial Motion Attorney:	Pretrial Motion Attorney:
Trial Attorneys:	Trial Attorneys:
Witness #1 Role: Name of Student:	Witness #1 Role: Name of Student:
Witness #2 Role: Name of Student:	Witness #2 Role: Name of Student:
Witness #3 Role: Name of Student:	Witness #3 Role: Name of Student:
Witness #4 Role: Name of Student:	Witness #4 Role: Name of Student:
Clerk:	Bailiff:

PRETRIAL MOTION TIME SHEET

________________________ V. ________________________
Defense - School Prosecution - School

Clerk ________________________

School ________________________

DEFENSE	PROSECUTION
Statement ________ (four minutes, **excluding** time judge asks questions and attorney answers them.)	Statement ________ (four minutes, **excluding** time judge asks questions and attorney answers them.)
Rebuttal ________ (two minutes, **excluding** time judge asks questions and attorney answers them.)	Rebuttal ________ (two minutes, **excluding** time judge asks questions and attorney answers them.)
TOTAL TIME	TOTAL TIME

NOTE: Give one-minute warnings before the end of **each** section.

Do not round off times.

MOCK TRIAL TIME SHEET

Clerk ______________________________ Judge ________________________ Date ________

____________________________________ V. ________________________________

Prosecution School Defense School

INSTRUCTIONS:
Mark the exact time in the appropriate blank. Do not round off. For direct, cross, and re-direct examination, record only the time spent by attorneys asking questions or witnesses answering questions.

Stop the clock (do not time) when:

- **witnesses enter the courtroom;**
- **attorneys make objections;**
- **judges question attorneys or make observations from the bench.**

PROSECUTION:

Opening Statement ________

Direct/Re-Direct Exam. (14 min.)

Prosecution Witness 1 ____/____

Prosecution Witness 2 ____/____

Prosecution Witness 3 ____/____

Prosecution Witness 4 ____/____

TOTAL TIME ________

Cross-Exam. (10 min.)

Defense Witness 1 ________

Defense Witness 2 ________

Defense Witness 3 ________

Defense Witness 4 ________

TOTAL TIME ________

Opening Statement (from above) ________

Closing ________

Rebuttal (1 min. max.) ________

TOTAL TIME ________

DEFENSE:

Opening Statement ________

Cross-Exam. (10 min.)

Prosecution Witness 1 ________

Prosecution Witness 2 ________

Prosecution Witness 3 ________

Prosecution Witness 4 ________

TOTAL TIME ________

Defense Witness 1 ____/____

Defense Witness 2 ____/____

Defense Witness 3 ____/____

Defense Witness 4 ____/____

TOTAL TIME ________

Opening Statement (from above) ________

Closing ________

Rebuttal (1 min. max.) ________

TOTAL TIME ________

California Mock Trial Program
1998-99

Student/Parent Agreement Form

I have received a copy of the 1998-99 California Mock Trial case and rules. As a condition of participation in this year's program, I agree to follow all rules and regulations as specified in the California Mock Trial materials or disseminated by CRF staff. I understand that the failure of any member or affiliate of our team to adhere to the rules may result in disqualification of the team.

____
School

____
Mock Trial Student Team Member (PLEASE PRINT)

____
Parent or Guardian (PLEASE PRINT)

____
Address

____
City/State/Zip

____
Home Phone (optional)

____
Mock Trial Student's Signature / Date

____
Parent or Guardian's Signature / Date

California Mock Trial Program
1998-99

Teacher-Sponsor(s)
Agreement Form

We have received a copy of the 1998-99 California Mock Trial case and rules. As a condition of participation in this year's program, we agree to discuss these rules with our team and to follow all rules and regulations as specified in the California Mock Trial materials or disseminated by CRF staff. We understand that the failure of any member or affiliate of our team to adhere to the rules may result in disqualification of the team.

We understand that this signed teacher-sponsor(s) agreement form, a team ethics form, and a complete set of signed student/parent agreement forms (one for **each** student team member with a parent or guardian's signature as well as the student's) must be received by the competition coordinator before the competition begins. If these forms are not received, our team may be disqualified.

____
School

____
Mock Trial Teacher-Sponsor (PLEASE PRINT)

____
Mock Trial Teacher-Sponsor's Signature / Date

____
Mock Trial Teacher-Sponsor (PLEASE PRINT)

____
Mock Trial Teacher-Sponsor's Signature / Date

Constitutional Rights Foundation
California Mock Trial Competition
Team Code of Ethics Oath

As a condition of participation in the 1998-99 California Mock Trial Program, each student participant must carefully read the statement below, then sign to acknowledge her/his commitment to the statement.

As a participant of the 1998-99 California Mock Trial Program, I pledge to adhere to the same high standards of scholarship that are expected of me as a student in my academic performance. I understand that plagiarism of any kind is unacceptable. I understand that all written and oral work done in conjunction with this program must be my own.

In relation to other teams and individuals with whom I come in contact through participation in this program, I pledge to make a commitment to act with good sportsmanship and respect for others in both victory and defeat.

I acknowledge that my actions will reflect upon my whole team, and I promise to take personal responsibility for my own actions throughout the competition.

School ____

1. Name (print): ____________________ Signature: ______________________ Date: ________
2. Name (print): ____________________ Signature: ______________________ Date: ________
3. Name (print): ____________________ Signature: ______________________ Date: ________
4. Name (print): ____________________ Signature: ______________________ Date: ________
5. Name (print): ____________________ Signature: ______________________ Date: ________
6. Name (print): ____________________ Signature: ______________________ Date: ________
7. Name (print): ____________________ Signature: ______________________ Date: ________
8. Name (print): ____________________ Signature: ______________________ Date: ________
9. Name (print): ____________________ Signature: ______________________ Date: ________
10. Name (print): ____________________ Signature: ______________________ Date: ________
11. Name (print): ____________________ Signature: ______________________ Date: ________
12. Name (print): ____________________ Signature: ______________________ Date: ________
13. Name (print): ____________________ Signature: ______________________ Date: ________
14. Name (print): ____________________ Signature: ______________________ Date: ________
15. Name (print): ____________________ Signature: ______________________ Date: ________
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